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101ST CONGRESS
1st Session

SENATE

REPORT
101-164

REPORT

OF THE

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE WALTER L. NIXON, JR.

OCTOBER 16 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

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101ST CONGRESS
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REPORT
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ON THE IMPEACHMENT OF WALTER L. NIXON, JR.

OCTOBER 16, (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

Mr. FOWLER, from the Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr., submitted the following

REPORT

PURPOSE

Pursuant to Senate Resolution 128 of the 101st Congress, which the Senate adopted on May 11, 1989, and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, this committee has received evidence and taken testimony on the Articles of Impeachment against United States District Judge Walter L. Nixon, Jr., Chief Judge of the Southern District of Mississippi. The Articles, which the House exhibited to the Senate on May 11, 1989, and amended on October 2, 1989,[1] allege that Judge Nixon knowingly made material false or misleading statements to Federal investigators and before a grand jury.

[1] H.R. Res. 251 amended Articles II and III to reflect a change in the text of one of the statements of Judge Nixon's grand jury testimony that the House alleges was knowingly false. This amendment reflected the parties' agreement during the committee's hearings that a close listening to the tape recording of Judge Nixon's grand jury testimony revealed that the original transcription of the testimony was in error. H.R. Res. 251 was received in the Senate on October 5, 1989, and was read, spread upon the Senate Journal, and printed in the Congressional Record. 135 Cong. Rec. S12649-50 (daily ed. Oct. 5, 1989).

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The first two articles each allege a single discrete false statement before the grand jury. Article I alleges that Judge Nixon falsely denied that the District Attorney for Forrest County, Mississippi, Paul "Bud" Holmes, had ever discussed with Judge Nixon a criminal case involving Drew Fairchild, the son of a businessman, Wiley Fairchild, with whom Judge Nixon had made an investment. Article II charges that Judge Nixon falsely stated that the Judge "had nothing whatsoever, officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon 'never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody' with respect to the Drew Fairchild case."

Article III alleges that Judge Nixon deliberately concealed conversations that he had about the *Drew Fairchild* case with Wiley Fairchild, Bud Holmes, and another individual named Carroll Ingram, by knowingly making "one or more" material false statements before the grand jury and "one or more" false statements in his interview with Federal investigators. The House alleges in Article III that Judge Nixon made a total of seven false statements in the interview and seven false statements in his grand jury testimony. The House charges that through his concealment and false statements, Judge Nixon "has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts." The full text of the amended articles, Judge Nixon's answer, and the replication of the House

of Representatives are reprinted in Senate Document No. 101-17.[2]

The Senate gave the committee two responsibilities in reporting the evidence that it has received. First, the committee is directed by Impeachment Rule XI to "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee." The committee will fulfill that responsibility in Part One of this report. Second, under Senate Resolution 128, "the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact." The committee will undertake that responsibility in Part Two of this report. The committee has no authority to recommend to the Senate whether the Senate should vote to convict or to acquit Judge Nixon on the Articles of Impeachment.

PART ONE—CERTIFICATION TO THE SENATE OF THE COMMITTEE'S PROCEEDINGS

The committee's proceedings are printed in Senate Hearing No. 101-247.[3] As required by Rule XI, the committee hereby certifies the hearing report to be a copy of the transcript of the proceedings and testimony had and given before it.

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[2] For convenience, the Articles of Impeachment, as amended, are also reprinted as Addendum A to this report, together with the text of Senate Resolution 128, as amended by Senate Resolution 167, which is Addendum B, and Senate Impeachment Rule XI, which is Addendum C.

[3] The full title of this document is *Report of the Senate Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr.: Hearings Before the Senate Impeachment Trial Committee,* 101st Cong., 1st Sess. (1989). Citations in this report to the committee's hearing report are to the part, where applicable the volume, and the page number of the hearing report.

The committee's hearing report is comprised of four parts. Part 1 documents the committee's pretrial proceedings from its appointment on May 11, 1989, until the beginning of the committee's evidentiary hearings on September 7, 1989. Part 2 constitutes the record of the committee's evidentiary hearings, which occupied four days between September 7 and 13, 1989, including the opening and closing statements for the House and Judge Nixon and the testimony of the four witnesses who were called by the House and the six witnesses who were called by Judge Nixon.[4] The parties' opening and closing statements and the witnesses' testimony are also available to Senators on videotape. All witnesses were subject to examination and cross examination by the managers or their counsel and by Judge Nixon's counsel. Members of the committee also examined the witnesses.

Part 3 of the hearing report contains the 132 exhibits that the committee admitted into evidence during its evidentiary proceedings. Part 4 of the hearing record reproduces the testimony of the witnesses and exhibits from prior proceedings that the committee admitted into its record to supplement the live testimony and exhibits that it received in its proceedings. The committee received into evidence all prior testimony and exhibits from Judge Nixon's criminal trial (Part 4A, Volumes I and II), the impeachment hearings in the House of Representatives (Part 4B, Volumes I, II, and III), and the evidentiary hearing that the district court held on Judge Nixon's motion to vacate his conviction and for a new trial (Part 4C).

Upon the Senate's receipt of this report, Rule XI provides that "the evidence so received and the testimony so taken shall be considered to all intents and purposes,

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[4] The House's witnesses were Kenneth White-Spunner, Wiley Fairchild, Paul H. "Bud" Holmes, and Carroll Ingram. Judge Nixon called five character witnesses and testified himself, and extensively cross examined the House's witnesses.

subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate. . . ." Rule XI makes clear, however, that "nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate." The full Senate may reassess the admissibility of the evidence received by the committee and may summon witnesses to testify in the Senate chamber.

Before deliberating on the Articles of Impeachment in closed session, the Senate will receive the arguments of the parties in two forms. The House and Judge Nixon will submit written briefs, which will be distributed to the Senators in advance of floor consideration of the Articles of Impeachment. Each party will also have the opportunity to deliver an oral summation to the Senate.

The committee is referring to the Senate, with this report, one additional matter for disposition. Before the commencement of its evidentiary proceedings, Judge Nixon moved to dismiss Article III (Part I, at 142), in which the House alleges that through a cumulative pattern of making false statements and concealing material information from the government, Judge Nixon disobeyed the law, undermined public confidence in the judiciary, and brought disrepute on the Federal administration of justice. Addendum A. In his motion to dismiss, Judge Nixon argues that this cumulative article fails to state an impeachable offense, is duplicative, and is confusing. Part I, at 144. In recognition that the committee lacks the authority to dismiss an impeachment article, Judge Nixon requested that the committee refer this motion to the full Senate for disposition. Part I, at 221.

The committee declined to refer Judge Nixon's motion to dismiss to the Senate before conducting the committee's proceedings and advised the parties that Judge Nixon could renew his motion before the full Senate

when the Senate takes up his impeachment on the floor following the conclusion of the committee's proceedings. Part I, at 365. The committee declined to refer Judge Nixon's motion to the Senate at that time because the Senate had recently denied a similar motion by Judge Hastings to dismiss the article of impeachment alleging cumulative conduct on his part. 135 Cong. Rec. S2802–03 (daily ed. Mar. 16, 1989). The committee found that evidentiary proceedings could be conducted fairly on Article III as drafted. The committee advised the parties of its understanding that the House's inclusion of alleged violations of general standards of conduct in impeachment articles, like the initial two paragraphs of Article III, has never been understood to constitute factual allegations intended to be subject to evidentiary proof. The committee described that language as "prefatory" and directed the parties that the only allegations in Article III that were to be the subject of its evidentiary proceedings were the allegations of false statements. Part I, at 365–66.

The committee further stated its view that Article III states an intelligible and adequately discrete charge of an impeachable offense by alleging that Judge Nixon concealed information concerning several conversations in which he had engaged, by making "one or more" false statements to investigatory officials and "one or more" false statements to a grand jury. The committee noted that the House has frequently chosen to aggregate multiple allegations in a single impeachment article and stated its belief that the House enjoys substantial discretion in determining how to aggregate related alleged acts of misconduct in framing impeachment articles. The committee expressed its view that the House's itemization in Article III of particular, alleged "false or misleading" statements serves to give Judge Nixon fair notice of the contours of the charge that he must defend against, without reducing the intelligibility of the article's essential accusation that Judge Nixon

knowingly concealed material information from the government. Part I, at 366. Although the committee reached this conclusion for the necessary purpose of conducting its evidentiary proceedings, the committee is referring Judge Nixon's motion to the Senate, because the ultimate determination of the questions of whether Article III is fair and whether it states an impeachable offense, as well as whether the House has proved its allegations, is properly within the province of the full Senate.

PART TWO—SUMMARY OF THE EVIDENCE

I. INTRODUCTION

This is the third impeachment in which the Senate has appointed a committee to compile evidence under Rule XI. As in the impeachment proceeding against Judge Alcee L. Hastings, the Senate authorized this committee "to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact." This portion of our report discharges that duty. In order to tell as coherent a story as possible and assist the Members of the Senate in understanding this case, the statement of evidence presented in this part of the report seeks to integrate uncontested facts with the evidence that the parties adduced on contested factual issues. The committee has sought to indicate as clearly as possible when there is conflicting evidence on any factual matter. The committee has not sought to present every fact to which the parties might attribute some significance. Likewise, undoubtedly the committee has included in its discussion some facts that one of the parties may view as irrelevant. The evidentiary summary does attempt to describe those matters that the committee understands to be the chief factual issues in dispute and to explain the significance of those factual controversies.

However, the principal discussion of each party's view of the evidence and of the overall case will be found not in this report but in the written briefs that each side will be filing and in each party's oral summation before the Senate. The committee's descriptions of the parties' theories and arguments are intended only to aid in its attempt to summarize the evidence in a coherent and meaningful fashion for the benefit of the Senate, not to substitute for the parties' marshaling of facts and arguments in support of their respective positions.

In structuring its proceedings, the committee was required to make judgments about two areas of inquiry on which the parties sought to limit the taking of evidence. The House sought to prevent Judge Nixon from adducing evidence in support of his defense that his criminal conviction was obtained through misconduct on the part of the government prosecutor. Judge Nixon, in turn, sought to prevent the House from presenting evidence concerning the investment between Judge Nixon and Wiley Fairchild, which was one of the principal matters under inquiry by the grand jury before which Judge Nixon allegedly testified falsely. In each case, the moving party asserted that the area of inquiry is irrelevant to the charges of false statements contained in the Articles of Impeachment.

The committee denied both motions, declining to bar, in advance of specific lines of examination, all evidence in these areas. Part 2, at 2. However, the committee directed the parties to focus their evidence on the particular allegations contained in the impeachment articles and reserved the right in the course of its proceedings to limit evidence pertaining to these areas if it became either cumulative or too tangential to the articles. Accordingly, the evidentiary proceedings focused principally on evidence that is directly relevant to the allegations that Judge Nixon knowingly made false statements to the government investigators and the grand

jury. Accordingly, this report also focuses principally on such evidence.

The committee advised the parties in its ruling that it viewed the issues of the investment and of prosecutorial misconduct to be relevant to the articles in a limited way. The nature of the investment relationship between Judge Nixon and Wiley Fairchild may be relevant background to assist in penetrating their state of mind and in evaluating Judge Nixon's potential motivation for making alleged false statements. The allegations of prosecutorial misconduct may be relevant to the extent that they affect the credibility of witnesses, principally Wiley Fairchild and Bud Holmes, who have testified adversely to Judge Nixon. Because of these potential matters of relevance, some evidence was taken in these areas, and this report consequently deals with these matters in a limited way.

The inclusion of this material should not be permitted to obscure two central and important facts: first, the House has not charged Judge Nixon with wrongdoing in his investment with Wiley Fairchild, and, second, it is Judge Nixon's actions, not those of the government prosecutors, that are the subject of the House's charges, and the Senate's trial and judgment. These other matters are important only if, and to the extent that, they help in determining whether Judge Nixon knowingly made false statements, as the House is alleging.

Section II of the summary of evidence presents an overview of the events underlying this impeachment and seeks to encapsulate the gist of the House's allegations and of Judge Nixon's defense. Section III completes the background discussion of the case summary by providing a brief history of Judge Nixon's investment with Wiley Fairchild and a brief history of Drew Fairchild's drug case.

Section IV contains a detailed description, generally in chronological order,[5] of the most important events about which evidence was presented in the case. The section begins by describing the evidence concerning certain of Judge Nixon's conversations with Wiley Fairchild, Bud Holmes, and Carroll Ingram, whose alleged concealment by Judge Nixon underlies the Articles of Impeachment. Next, the section discusses the events prior to the time that the government began investigating whether Judge Nixon was involved in the handling of the *Drew Fairchild* case. The report then summarizes the government's investigation and prosecutions, including Judge Nixon's interview and grand jury appearance, his subsequent actions, and the actions and testimony of the other participants during the investigation.

II. OVERVIEW OF THE CASE

A. JUDGE NIXON'S BACKGROUND AND THE BACKGROUND OF THESE CHARGES

1. Judge Nixon's Background

Judge Nixon is now 60 years old and has raised seven children, who range in age from 12 to 39. He graduated from Tulane University Law School in 1951, and, after passing the Louisiana and Mississippi Bars, Judge Nixon began practicing law in Biloxi, Mississippi. In 1953 Judge Nixon was called to active duty in the Air Force. Following his discharge from active duty in 1955, Judge Nixon returned to his private law practice, specializing in plaintiffs' personal injury work. At the age

[5] One of the important factual disputes between the parties concerns the date of particular conversations among Judge Nixon, Wiley Fairchild, and Bud Holmes. We describe in Section IV–A4 the evidence adduced on the dating of these conversations. The committee's decision to relate the evidentiary issues in chronological order for clarity, and its necessary placement of its description of these conversations somewhere in its report, should not be misconstrued as support for any particular position concerning the likely date of these conversations—a matter, like all disputed factual issues, as to which the committee takes no position.

of 39, Judge Nixon, already a prominent and successful trial lawyer, was appointed a United States District Judge for the Southern District of Mississippi by President Lyndon B. Johnson in June 1968. House Ex. 41, Stip. 1, Pt. 3, at 424.[6] The southern district contains the more populous communities of Mississippi, and Judge Nixon described the court during his twenty-one years on the bench as having one of the heaviest case loads per judge among the district courts in the country. Nixon, Pt. 2, at 226–27; House Ex. 41, Stip. 3, Pt. 3, at 424. Judge Nixon became chief judge of the southern district in 1982. House Ex. 41, Stip. 2, Pt. 3, at 424. Five character witnesses testified uniformly that Judge Nixon's "reputation for truthfulness [in the legal community] is excellent." Denton, Pt. 2, at 209. One witness called Judge Nixon "one of the finest men that I have ever known." Saxon, Pt. 2, at 224.

The committee was told that a "close relationship" exists between the judiciary and the bar in Hattiesburg. Ingram, Pt. 2, at 179–80. Carroll Ingram, who has practiced in the community for 22 years (Ingram, Pt. 2, at 159), gave the following description of the "relaxed atmosphere":

> I think that that just grows out of a style and a way of life in our community, in our town. I know it is difficult to believe if you come from a metropolitan area, but in Hattiesburg, Mississippi and

---

[6] All citations to the committee's hearing record will identify the exhibit, stipulated fact, or name of the witness whose testimony is relied upon. The House's exhibits are cited "House Ex.," and Judge Nixon's exhibits are cited "Nixon Ex." Both are cited to the page where they appear in the record. All stipulated facts were admitted into evidence as House Ex. 41. References to testimony cite the name of the witness and the page of the transcript at which the testimony appears. References to testimony and exhibits from prior proceedings are cited to Part 4, where they are reproduced. Exhibits from the House proceedings are cited as "House Comm. Ex." and "Ex. N-," depending upon whether they were offered by the House or by the Judge.

> in that area, our whole community has kind of grown out of a rural setting of large families. You know almost everyone; you know everyone's family. There is not the line drawn here, and you don't cross that line. You know, the judges in our area for years have gone to the same social functions that everybody else goes to in the community, do the same things about hunting and fishing and the other things that other people do.
>
> There has not been a total separateness of the judiciary in the community, so I really think that's an accurate description of that.

Ingram, Pt. 2, at 181.

2. Judge Nixon's Criminal Prosecution

On April 19, 1984, Judge Nixon agreed to be interviewed in his chambers by an attorney with the Public Integrity Section of the Criminal Division of the Department of Justice, Reid Weingarten, and a Special Agent of the Federal Bureau of Investigation, Kenneth White-Spunner. House Ex. 41, Stip. 77, Pt. 3, at 431. The government was investigating Judge Nixon's investment with Wiley Fairchild and the handling of a drug smuggling case involving Wiley's son, Drew. House Ex. 41, Stip. 76, Pt. 3, at 431.[7] The investigation was triggered by a telephone call to the Federal Bureau of Investigation on November 3, 1983, from an anonymous informant, who later identified himself as Robert L. "Skip" Jarvis, a former employee of Wiley Fairchild's firm and a relative of Wiley's by marriage. White-Spunner, Pt. 2, at 17–18. Jarvis told the FBI that Wiley might have conveyed mineral interests to Judge Nixon as a bribe for favorable treatment in Drew's drug case. House Ex. 41, Stip. 74–75, Pt. 3, at 431. In the roughly 45-minute interview, which was tape-recorded with Judge Nixon's consent (House Ex. 1, Pt. 3, at 1; House Ex. 41, Stip. 78, Pt. 3, at 432), Judge Nixon was asked about his invest-

[7] Wiley's son's real name is Reddit Andrew Fairchild, but he is known as Drew.

ment with Wiley Fairchild and about whether he had had any involvement in or knowledge of a criminal case involving marijuana smuggling by Drew Fairchild and others at the Hattiesburg airport, which had been transferred from Federal to state authorities in Mississippi. On July 18, 1984, Judge Nixon voluntarily appeared before a special Federal grand jury in Hattiesburg in the Southern District of Mississippi that was investigating the same matters. House Ex. 41, Stip. 79, Pt. 3, at 432. His testimony there was also tape-recorded (House Ex. 2, Pt. 3, at 53).

On August 29, 1985, the grand jury indicted Judge Nixon on one count of accepting an illegal gratuity, for the conveyance of mineral interests by Wiley Fairchild, in violation of 18 U.S.C. § 201(g), and three counts of making false declarations before the grand jury, a form of perjury, for denying having ever discussed Drew Fairchild's drug case with anyone, in violation of 18 U.S.C. § 1623. House Ex. 41, Stip. 4, Pt. 3, at 424.[8] Judge Nixon relinquished his judicial duties upon his indictment and has not heard cases since then. House Ex. 41, Stip. 15, Pt. 3, at 425. He has continued to receive his judicial salary throughout this period. House Ex. 41, Stip. 16, Pt. 3, at 425.

Following a two-week trial presided over by Judge James H. Meredith of the Eastern District of Missouri, on February 9, 1986, Judge Nixon was convicted of two of the perjury counts and was acquitted of the gratuity charge and the third perjury count. House Ex. 41, Stip. 5, Pt. 3, at 424.[9] On March 31, 1986, Judge Meredith denied Judge Nixon's post-trial motions for acquittal and for a new trial and sentenced him to five years imprisonment on each of the perjury charges on which he was convicted, the sentences to run concurrently. House

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[8] Judge Nixon's four-count indictment appears as House Ex. 28, Pt. 3, at 308. Judge Nixon was not indicted for his statements in his interview.

[9] The jury verdict form is House Ex. 29, Pt. 3, at 317.

Ex. 41, Stip. 6–7, Pt. 3, at 425.[10] Based on his perjury convictions, Judge Nixon was suspended from the practice of law in Mississippi and Louisiana. House Ex. 41, Stip. 9, Pt. 3, at 425.[11] On April 30, 1987, the United States Court of Appeals for the Fifth Circuit affirmed Judge Nixon's criminal convictions. House Ex. 41, Stip. 10, Pt. 3, at 425.[12] The Fifth Circuit denied Judge Nixon's petition for rehearing and suggestion for rehearing *en banc*. House Ex. 41, Stip. 10, Pt. 3, at 425.[13] On January 19, 1988, the United States Supreme Court denied his petition for a writ of certiorari, declining to review his case. House Ex. 41, Stip. 11, Pt. 3, at 425.[14]

On February 11, 1988, the Judicial Council of the Fifth Circuit certified to the Judicial Conference, under 28 U.S.C. § 372(c)(7)(B), that Judge Nixon had engaged in conduct that might constitute grounds for impeachment. House Ex. 41, Stip. 12, Pt. 3, at 425. On March 15, 1988, based on the criminal convictions, the Judicial Conference certified and transmitted to the House of Representatives a determination that Judge Nixon's impeachment may be warranted. House Ex. 41, Stip. 13, Pt. 3, at 425.[15] On March 23, 1988, Judge Nixon began serving his sentence at Eglin Air Force Base Prison Camp in Florida, House Ex. 41, Stip. 14, Pt. 3, at 425; he recently was transferred to a halfway house in New Orleans to complete the short remaining time to be served

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[10] The court's memorandum and order are House Ex. 31, Pt. 3, at 320. The entry of Judge Nixon's judgment and sentence appear as House Ex. 30, Pt. 3, at 319.

[11] *Mississippi State Bar* v. *Nixon,* 494 S.2d 1388 (Miss. 1986), House Ex. 35, Pt. 3, at 356.

[12] *United States* v. *Nixon,* 816 F.2d 1022 (5th Cir. 1987), House Ex. 32, Pt. 3, at 337.

[13] *United States* v. *Nixon,* 827 F.2d 1019 (5th Cir. 1987) (per curiam), House Ex. 33, Pt. 3, at 349.

[14] 108 S.Ct. 749 (1988), House Ex. 34, Pt. 3, at 355.

[15] The certificate of the Judicial Conference and the determination of the Judicial Council appear as House Ex. 36, Pt. 3, at 360.

under his sentence. On December 19, 1988, Chief Judge John F. Nangle of the Eastern District of Missouri denied Judge Nixon's motion, after a two-day evidentiary hearing, to vacate his criminal convictions. House Ex. 41, Stip. 17–19, Pt. 3, at 426.[16] The court rejected Judge Nixon's claims that the government (1) had withheld from him materials that it should have provided for use at trial, (2) had knowingly used false testimony, (3) had created a "perjury trap" for Judge Nixon, and (4) had engaged in prosecutorial abuse and misconduct. On August 17, 1989, the court of appeals affirmed the district court's decision and declined to grant Judge Nixon a new trial, finding that his trial had been fundamentally fair. House Ex. 41, Stip. 20, Pt. 3, at 426.[17]

B. SUMMARY OF THE ARTICLES OF IMPEACHMENT

On May 16, 1989, after evidentiary proceedings before the Subcommittee on Civil and Constitutional Rights of its Committee on the Judiciary, the House of Representatives impeached Judge Nixon for high crimes and misdemeanors by a vote of 417 to 0. House Ex. 41, Stip. 26, Pt. 3, at 426; H. Res. 87. The House charged Judge Nixon with three articles alleging that he made false or misleading statements. All of the House's allegations of false statements trace from Judge Nixon's answers to questions posed of him concerning his knowledge of, conversations about, and involvement in Drew Fairchild's drug conspiracy case. On October 2, 1989, the House amended the impeachment articles to reflect an enhanced understanding of the exact text of one instance of Judge Nixon's allegedly false testimony. H. Res. 251, 135 Cong. Rec. H6427, 6435–36 (daily ed. Oct. 2, 1989). Articles I and II generally track the two counts on which Judge Nixon was convicted of perjury in con-

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[16] *Nixon v. United States*, 703 F. Supp. 538 (S.D. Miss. 1988), House Ex. 37, Pt. 3, at 364.

[17] *United States v. Nixon*, 881 F.2d 1305 (5th Cir. 1989), House Ex. 39, Pt. 3, at 403.

nection with his grand jury testimony. Article III details those and additional statements of Judge Nixon's, both before the grand jury and to the government investigators, that the House likewise alleges were knowingly false and material.

The Articles of Impeachment are set out, as amended, in their entirety in Addendum A to this report. For convenient reference, following is a list of the false statements alleged by the House, with citations to the impeachment articles. In order that Members may read the allegedly false statements in the context in which Judge Nixon originally spoke them, citations to the transcripts of Judge Nixon's interview and grand jury appearance are also included. The House's charges of Judge Nixon's false statements are as follows:

> "Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon." (Art. I; House Ex. 2, at 47–48, Pt. 3, at 101–02)
>
> "Judge Nixon had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon 'never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody' with respect to the Drew Fairchild case." (Art. II; House Ex. 2, at 76–77, Pt. 3, at 130–31)
>
> "Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case." (Art. III (1)(A); House Ex. 1, at 25, Pt. 3, at 25)
>
> "Wiley Fairchild never brought up his son's case." (Art. III (1)(B); House Ex. 1, at 32, Pt. 3, at 32)
>
> "At the time of the interview Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the

interview." (Art. III (1)(C); House Ex. 1, at 32–33, Pt. 3, at 32–33)

"Nothing was done or nothing was ever mentioned about Wiley Fairchild's son." (Art. III (1)(D); House Ex. 1, at 37, Pt. 3, at 37)

"Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case." (Art. III (1)(E); House Ex. 1, at 43, Pt. 3, at 43)

"Judge Nixon had done nothing to influence the Drew Fairchild case." (Art. III (1)(F); House Ex. 1, at 47, Pt. 3, at 47)

"State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case." (Art. III (1)(G); House Ex. 1, at 48, Pt. 3, at 48)

"Paul Holmes never discussed the Drew Fairchild case with Judge Nixon." (Art. III (2)(A); House Ex. 2, at 47–48, Pt. 3, at 101–02) [18]

"To the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February 1981." (Art. III (2)(B); House Ex. 2, at 56, Pt. 3, at 110)

"Judge Nixon gave the grand jury all the information that he had and that he could, and had withheld nothing during his grand jury testimony." (Art. III (2)(C); House Ex. 2, at 75–76, Pt. 3, at 129–30)

"Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court." (Art. III (2)(D); House Ex. 2, at 76, Pt. 3, at 130)

"Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild

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[18] This sub-article charges the same false statement charged in Article I.

case." (Art. III (2)(E); House Ex. 2, at 76, Pt. 3, at 130)

"Judge Nixon never had a thing to do with the Drew Fairchild case at all." (Art. III (2)(F); House Ex. 2, at 76, Pt. 3, at 130)

"Judge Nixon 'never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody' with respect to the Drew Fairchild case." (Art. III (2)(G); House Ex. 2, at 76–77, Pt. 3, at 130–31) [19]

C. OVERVIEW OF THE HOUSE OF REPRESENTATIVES' ALLEGATIONS OF JUDGE NIXON'S FALSE STATEMENTS

The accusation that Judge Nixon knowingly made false material statements during his interview and grand jury testimony is based on the House's contention that Judge Nixon deliberately concealed from the government investigators and grand jury three conversations in which he had participated in a single day. The first conversation occurred during a meeting between Judge Nixon and Wiley Fairchild at Fairchild's office. The second conversation occurred a few hours later during a visit by Judge Nixon with Bud Holmes, the state prosecutor. The third conversation occurred very shortly after the conversation with Holmes, during a telephone call placed from Holmes' farm to Wiley Fairchild in which both Judge Nixon and Holmes participated.

Many specific details—including some that are very important—about each of these conversations are disputed by the parties. Indeed, the committee received dramatically inconsistent testimony concerning the substance, date,[20] and result of these conversations from the participants in the conversations themselves—Judge

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[19] This sub-article, the preceding sub-article, and the third preceding sub-article each charge a portion of the same false statement charged in Article II.

[20] Evidence about the date of the conversations ranges from May 1982 to March 1983, as described in Section IV–A4.

Nixon, Wiley Fairchild, and Bud Holmes—as well as from a fourth witness, Carroll Ingram, who has second-hand knowledge based on his conversations with the participants. Familiarity with these witnesses' various, and divergent, testimony concerning these three conversations is critical to obtaining an understanding of the parties' respective positions concerning the false statements alleged by the House. Therefore, Section IV of this report reviews in detail the evidence adduced by the House and by Judge Nixon concerning these conversations.

The House also takes the position that, even crediting Judge Nixon's testimony concerning the substance and timing of these conversations, and discrediting any inconsistent testimony of its own witnesses, the knowing falsity of Judge Nixon's statements as alleged in the Articles of Impeachment is nonetheless evident. The purpose of this section is to provide only an overview of these conversations sufficient to explain the House's position that Judge Nixon's own version of these conversations establishes a basis for his conviction.

According to Judge Nixon's recollection, Judge Nixon met with Wiley Fairchild in Fairchild's office in the early afternoon one day. Nixon, Pt. 2, at 232. Wiley Fairchild testified that he was concerned about the handling of his son Drew's drug case and suspected that the state prosecutor, Bud Holmes, was attempting to use Drew's predicament to blackmail Wiley. Wiley believed that a friend of his son's named Robert Royals, whom Wiley understood to be equally guilty with his son of involvement in the drug-smuggling conspiracy to which Drew had pleaded guilty, was being treated less harshly (i.e., Royals had not been charged at all) than was his son by prosecutor Holmes. Wiley attributed this differential treatment to his own wealth and Holmes' attempt to pressure Wiley into paying money to Drew's attorney, Bill Porter. Fairchild, Pt. 2, at 54, 68–69, 77–78, 79–80; Nixon, Pt. 2, at 233.

Wiley testified that he called Judge Nixon because he knew that Judge Nixon was a friend of Holmes' and he thought that, since he and Judge Nixon had also become friends, Judge Nixon would likely help him out by raising the matter with Holmes. In Wiley's words, "that's just the way of life. Friends help friends." Fairchild, Pt. 2, at 53. Fairchild testified that he does not remember specifically whether or not Judge Nixon said that he would help him but that Fairchild had the "impression" that Judge Nixon would "at least go talk to him [Holmes]." Fairchild, Pt. 2, at 54. Although Judge Nixon also does not recall exactly what he said in response to Fairchild (Nixon, Pt. 2, at 233), he testified that Fairchild "didn't ask me to do anything, and I didn't tell him I was going to do anything." Nixon, Pt. 2, at 250. Judge Nixon told the committee that he had received the "impression" that Fairchild "probably wanted me to pass that [blackmail] matter on [to Holmes] to get it straightened out." Nixon, Pt. 2, at 250.

The second important conversation of that day occurred when Judge Nixon visited with Holmes in the late afternoon and "passed along the complaint of Wiley Fairchild" in order "to let Bud Holmes know . . . and, also, to try to get the matter straightened out." Nixon, Pt. 2, at 251. According to Judge Nixon's recollection, he "just said that Mr. Fairchild was complaining about a case that Mr. Holmes was handling involving his son." Nixon, Pt. 2, at 252. Holmes testified that Judge Nixon had told him that the Judge had been visiting with Wiley Fairchild "and that Wiley had asked him to put in a good word for his boy," but that Judge Nixon "was very emphatic he wasn't asking me to do anything." Holmes, Pt. 2, at 97, 145–46, 153.[21] Holmes described the conversation as Judge Nixon's having "let me know that Mr. Fairchild expressed an interest in his

[21] Judge Nixon testified before the committee that he never told Holmes that Wiley Fairchild had asked him to "put in a good word for Drew." Nixon, Pt. 2, at 254.

son's case." Holmes, Pt. 2, at 153. Judge Nixon recalled having said, " 'Bud, a matter that you're handling concerning Mr. Fairchild's son was brought up—he mentioned it to me and complained that you were blackmailing him.' " Nixon, Pt. 2, at 235. Judge Nixon and Holmes both testified that the Judge had told Holmes that he "did not want to go necessarily into the facts" of Drew's case. Holmes, Pt. 2, at 99, 113–14; Nixon, Pt. 2, at 235, 253.

The third relevant conversation occurred shortly thereafter, when a telephone call was placed to Wiley Fairchild and both Judge Nixon and Holmes spoke to Fairchild. Whether it was Judge Nixon or Holmes who placed the call, and, as with the earlier conversations, exactly what was said by either party during the telephone call, is in dispute.[22] At a minimum, however, the parties agree that Fairchild was told that Judge Nixon had raised with Holmes the concern that Fairchild had expressed to Judge Nixon earlier that day, and that "Wiley Fairchild thanked Judge Nixon for speaking with Mr. Holmes about the handling of Drew Fairchild's case and told Judge Nixon, 'I'm satisfied.' " House Ex. 41, Stip. 71, Pt. 3, at 431.

The House contends that, even under Judge Nixon's version of the circumstances and substance of these three conversations, his statements to investigators and before the grand jury are false, as alleged in the impeachment articles. The House maintains that Judge Nixon's conversation with Wiley Fairchild in the early afternoon, concerning Wiley's complaint about the handling of his son Drew's case by prosecutor Holmes, renders false Judge Nixon's statements that Wiley had never brought up his son's case (Art. III (1)(B)); that Judge Nixon had never discussed anything about Drew's case with Wiley (Art. III (1)(A)); that Judge Nixon recalled no reason why he would have met with

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[22] The conflicting evidence on these matters is summarized in Section IV–A2c, d, and e below.

Wiley after they had finalized their investment in February 1981 (Art. III (2)(B)); that nothing was done or ever mentioned about Drew (Art. III (1)(D)); and that, except for what he had read in the newspaper, Judge Nixon had not heard anything about Drew's case and did not even know that Drew existed (Art. III (1)(C), Art. III (2)(E)).

The House likewise argues that Judge Nixon's subsequent conversation with Holmes renders false Judge Nixon's statements that he and Holmes had never discussed or talked about Drew's case (Art. I, Art. III (1)(G), Art. III (2)(A), Art. III (2)(E)); that Judge Nixon had nothing whatsoever unofficially to do with Drew's case (Art. III (2)(D), Art. III (2)(F)); that Judge Nixon had done nothing to influence Drew's case (Art. III (1)(F)); and that Judge Nixon never talked to anyone that in any way influenced anybody with respect to Drew's case (Art. II, Art. III (2)(G)). Relying on the existence of all three of Judge Nixon's conversations, none of which he disclosed to the grand jury, the House contends that Judge Nixon falsely testified that he gave the grand jury all the information that he had and withheld nothing (Art. III (2)(C)).

D. OVERVIEW OF JUDGE NIXON'S EXPLANATION FOR HIS STATEMENTS

Judge Nixon does not deny that the three conversations discussed above occurred or that he failed to tell the investigators and the grand jury about them. Judge Nixon has two basic defenses to the House's accusations that he knowingly made false statements to conceal these conversations. The simpler explanation that Judge Nixon has given for his failure to relate these conversations, and for his statements cited in the impeachment articles, is that he did not remember these conversations at either his interview or his grand jury appearance. Judge Nixon testified before the committee that, prior to his being reminded by Bud Holmes in February 1985, the conversations "simply did not come to

my mind; it was a nothing, and I'm sure it was in my recollect. I can't say it was forgotten, but I did not think about it. It was so—it was something that was, I guess the reason I didn't think about it, I don't know to this day, but I just simply did not think about it." Nixon, Pt. 2, at 241. Judge Nixon said that at the time of his interview in April 1984 he "had no recall" about the conversations "because it amounted to nothing. It's been blown up so much now and magnified. But back then, it amounted to nothing. It resulted in nothing." Nixon, Pt. 2, at 265.[23]

Alternatively, Judge Nixon relies upon the asserted truth of his statements to support his acquittal on the House's charges. Giving each alleged false statement a narrow construction and relying upon his claimed understanding of the limited context of the government's inquiry, Judge Nixon contends that his statements were literally true and cannot support the House's charge that he deliberately withheld material information from the government. Pt. 2, at 330–32 (Judge Nixon's summation). Concerning Article I, for example, which alleges that Judge Nixon falsely stated that state prosecutor Bud Holmes had never discussed the *Drew Fairchild* case with him, Judge Nixon maintains that his statement was literally true, because he raised with Holmes only the blackmail allegation concerning the handling of Drew's case and stopped Holmes from telling him anything about the substance of the case. Nixon, Pt. 2, at 253, 282; Pt. 2, at 332–33 (Judge Nixon's summation).

Similarly, Judge Nixon asserts that his statement cited in Article II and Article III (2)(G), that he never talked to anyone, including the state prosecutor, that in any way influenced anybody with respect to Drew's case, is true, because his conversation with Bud Holmes did not influence Holmes' handling of Drew's case and,

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[23] Nixon, Pt. 2, at 239, 262–63, 266, 268–71, 273–74, 276–81, 300, 314–17; Pt. 2, at 325–26, 335–37 (Judge Nixon's summation).

even if it did, Judge Nixon did not know that it did. Nixon, Pt. 2, at 271, 282, 290; Pt. 2, at 331, 333 (Judge Nixon's summation). In Article III (1) (A) and (B), Judge Nixon responds to the charges that he falsely stated that he had never discussed Drew's case with Wiley Fairchild and that Wiley never brought up Drew's case, by drawing a distinction between Wiley's allegation that he was being blackmailed by Holmes' handling of Drew's case, which Judge Nixon admits that Wiley raised with him, and Drew's case itself, which Judge Nixon asserts that he truthfully told the government investigators that he and Wiley did not discuss. Nixon, Pt. 2, at 253, 291; Pt. 2, at 334–35 (Judge Nixon's summation).

Judge Nixon argues that his statement that nothing was ever done or said about Wiley Fairchild's son (Article III (1)(D)) was true in the context in which he understood that the question was being asked, namely, at the time of his arranging to invest with Wiley, and not after their investment was consummated. Nixon, Pt. 2, at 265, 267; Pt. 2, at 334–35 (Judge Nixon's summation). Similarly, Judge Nixon maintains that his statements that he "never handled any part" of Drew's case or "had a thing to do with it at all" (Article II, Article III (2)(F)) were true in the context of Judge Nixon's full answer, which was intended to convey that he had not handled the case in court. Pt. 2, at 333 (Judge Nixon's summation).

More generally, Judge Nixon attributes his failure to tell the government about his conversations with Wiley Fairchild and Holmes to the fact that his questioning was "channelled very aggressively by the interviewers" to the subject of how Drew's case got transferred from Federal to State court—rather than how it was subsequently handled in State court—and whether the transfer was related to Judge Nixon's investment with Drew's father, Wiley. Pt. 2, at 336 (Judge Nixon's summation); Nixon, Pt. 2, at 261–64. Judge Nixon testified

that he "wish[es] they [the government investigators] had asked me something about a blackmail allegation. That would have probably triggered it. But they didn't ask me that." Nixon, Pt. 2, at 265. Judge Nixon continued, "I had no intent to hide anything. Certainly, there was nothing there to hide. There was no, no crime of any kind, no illegal activity, no nothing. If I had thought about it, I certainly would have mentioned it, but I did not think about it." Nixon, Pt. 2, at 265.

A detailed discussion of Judge Nixon's testimony in support of those explanations, and the other evidence in the record relating to his explanations, appears in Section IV-B.

III. BRIEF HISTORY OF JUDGE NIXON'S INVESTMENT WITH WILEY FAIRCHILD AND OF DREW FAIRCHILD'S DRUG CASE

Although Judge Nixon's investment with Wiley Fairchild is not itself the subject of any charges by the House, it provides an important part of the background for the government investigation in the course of which Judge Nixon allegedly gave false statements. This section contains a brief history of the investment in order to provide Members with an understanding of the context in which Judge Nixon gave his interview and grand jury testimony. Then, this section briefly summarizes the history of Drew Fairchild's drug case, which the House alleges that Judge Nixon falsely denied knowledge of, discussions about, and involvement in.

A. JUDGE NIXON'S INVESTMENT WITH WILEY FAIRCHILD

Judge Nixon testified that in 1979 he felt a strong need for income to supplement his judicial salary in order to meet anticipated college expenses for the five of his seven children who were then living at home (whose ages then ranged from 2 to 15), as well as educational expenses for a child who has a learning disability. Nixon, Pt. 2, at 228–29, 243–44. Judge Nixon contacted "various" friends who had been successful in business to explore possible investments to augment his income. Nixon, Pt. 2, at 229.

One friend whom Judge Nixon approached was Carroll Ingram, who was a Hattiesburg, Mississippi attorney who appeared before him. Nixon, Pt. 2, at 229; Ingram, Pt. 2, at 160; House Ex. 41, Stip. 27, Pt. 3, at 427. Ingram had first become acquainted with Judge Nixon when Ingram began his law practice in 1967. Ingram, Pt. 2, at 160. In addition to his private law practice, Ingram served in the Mississippi State Senate from 1972 to 1980 and chaired the Judiciary Committee. Ingram, Pt. 2, at 159–60.

Judge Nixon asked Ingram if Ingram would talk to Wiley Fairchild about the possibility of Fairchild's putting Judge Nixon in an investment. Nixon, Pt. 2, at 244; Ingram, Pt. 2, at 161. Judge Nixon did not know Fairchild personally (although they may have met at some point previously), but he knew Fairchild to be a very successful businessmen in Hattiesburg. Nixon, Pt. 2, at 244; House Ex. 41, Stip. 28, Pt. 3, at 427.[24] Ingram is a second cousin of Fairchild's and did work for him as an attorney. Fairchild, Pt. 2, at 49; Ingram, Pt. 2, at 161, 178, 186. Fairchild was in his late 60's at the time, and he is now 77. Fairchild left school after the fourth grade (Fairchild, Pt. 2, at 46), but the oil exploration and construction company that he manages with his brother has annual revenues exceeding $5 million a year. Fairchild, Pt. 4A, Vol. I, at 461–62; Fairchild, Pt. 4B, Vol. I, at 142–43. Fairchild's father began the business as a contracting firm, and Fairchild expanded into oil exploration. Fairchild has been "real successful" in the oil business and became wealthy. Fairchild, Pt. 2, at 48.

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[24] Judge Nixon and the House have agreed that this conversation occurred in February 1979 (House Ex. 41, Stip. 27, Pt. 3, at 427), although Ingram remembered it as having occurred in late 1979 or possibly early 1980. Ingram, Pt. 2, at 161; Ingram, Pt. 4A, Vol. I, at 1029, 1031. Judge Nixon testified before the House that it was Ingram, not the Judge, who had first mentioned Fairchild's name as a prospective individual with whom to invest (Nixon, Pt. 4B, Vol. I, at 421, 475), but Ingram told the committee that Judge Nixon had mentioned Fairchild's name first. Ingram, Pt. 2, at 161.

Judge Nixon testified that he inquired of several people, including Bud Holmes, about Fairchild's success in the oil and gas business. Nixon, Pt. 4B, Vol. I, at 421. Judge Nixon said that Holmes told him "that you could not pick a man who was more successful or had more expertise to invest with than Wiley Fairchild; that is, in the oil and gas business." Nixon, Pt. 4B, Vol. I, at 421. Holmes testified that he told Judge Nixon that "whenever anyone invested with him [Fairchild], that he always liked to make sure they were successful" and that "Mr. Fairchild just enjoyed being very close to people in prominent places." Holmes, Pt. 2, at 92.[25] In the House, Holmes said that he told the Judge, "I think Wiley would go out and pour oil down in the hole before he'd let you come up with a dry hole." Holmes, Pt. 4B, Vol. I, at 233.

Subsequently, Judge Nixon contacted Ingram "a couple of times" to attempt to conclude his transaction with Fairchild, but was told by Ingram that Fairchild "is the kind of man you cannot push. He will take his own sweet time." House Ex. 41, Stip. 31, Pt. 3, at 427; Nixon, Pt. 2, at 244; Ingram, Pt. 2, at 161–62. Ingram told the committee that he "felt on-the-spot about that particular situation [the Judge's request to him] and was reluctant about it." Ingram, Pt. 2, at 178, 190. Ingram "procrastinated to some extent about making that request, but I finally did make that request" to Fairchild. Ingram, Pt. 2, at 162. In Fairchild's words, Ingram approached him "about putting the Judge in—he just said a good deal." Fairchild, Pt. 2, at 49.

According to Ingram, Fairchild told Ingram "that he was certainly agreeable to that and that he would look for an opportunity that would be appropriate for an investment." Ingram, Pt. 2, at 162. Fairchild explained

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[25] Fairchild testified previously that he made a number of political campaign contributions and had placed a governor of Mississippi and a mayor of Hattiesburg in investments. Fairchild, Pt. 4A, Vol. I, at 538–41; Fairchild, Pt. 4B, Vol. I, at 144–45, 156.

that he agreed to sell interests to Judge Nixon because "Carroll [Ingram] asked me to, and I knew him and the judge was good friends, and it wasn't that I wanted—exactly wanted to sell it to him. I didn't want to not sell it to him." Fairchild, Pt. 2, at 49. Fairchild said that the fact that Judge Nixon was a Federal judge "had some influence" on his decision, but that "it just wasn't no big deal. I didn't put no significance in it. I just simply—it wasn't going to matter what he's going to get out of it, you know. It wouldn't affect me enough to matter, so I just wasn't concerned about it." Fairchild, Pt. 2, at 49. Ingram notified Judge Nixon of Fairchild's agreement and testified that the Judge was pleased about it. Ingram, Pt. 2, at 162.

In February or March 1980, Judge Nixon met with Fairchild at Fairchild's office. Fairchild told Judge Nixon that he had heard of the Judge, that he wanted to meet him, and that Ingram had recommended him. House Ex. 41, Stip. 32-33, Pt. 3, at 427. According to Judge Nixon, by the end of that meeting, he and Fairchild had tentatively agreed to enter into an investment, with no discussion over the price or the other terms of the investment. House Ex. 41, Stip. 34, Pt. 3, at 427. Ingram concurred that general agreement to make an investment was reached "[i]n about March of 1980." Ingram, Pt. 2, at 178. Fairchild selected partial interests in three wells to convey to Judge Nixon without any discussion or negotiation with Judge Nixon over the wells or the price. House Ex. 41, Stip. 29-30, Pt. 3, at 427. Ingram recalls that, after the passage of "some long period of time," Fairchild described to Ingram the properties that he had selected for Judge Nixon, and Ingram told the Judge about them. Ingram, Pt. 2, at 162.

In February 1981, after what Ingram remembers as another "long period of time" (Ingram, Pt. 2, at 162), draft documents conveying royalty interests in three wells were prepared by an employee of Fairchild's com-

pany named Robert L. "Skip" Jarvis. House Ex. 41, Stip. 35, Pt. 3, at 427. The draft royalty deeds (House Ex. 4, Pt. 3, at 173–79) were sent to Ingram, who reviewed them and returned them to Fairchild for correction of an error in the acreage being conveyed. House Ex. 41, Stip. 37, Pt. 3, at 427; Ingram, Pt. 2, at 162–63, 174. The draft conveyances were originally dated February 25, 1981 (House Ex. 41, Stip. 36, Pt. 3, at 427), but upon revision both the conveyances (House Ex. 5, Pt. 3, at 180–89) and the promissory notes (House Ex. 6, Pt. 3, at 190–92) were backdated to February 25, 1980.

Judge Nixon testified that Ingram brought him the documents in early 1981 and that Ingram explained to him that it was customary in the oil and gas business to backdate instruments to the time that a transaction had been agreed upon. Nixon, Pt. 2, at 230, 244, 302–03. Fairchild testified that Ingram had suggested backdating the papers "to coincide with when the deal was made" and explained that "that's common in the oil business." Fairchild, Pt. 2, at 86–87. Ingram confirmed that he viewed "backdat[ing] an instrument to reflect the time that the transaction actually occurred" as a usual and proper practice. Ingram, Pt. 2, at 187.

In return for the royalty interests, Judge Nixon agreed to pay Fairchild's company a total of $9,500. Fairchild testified that "[u]nder certain circumstances" $9,500 "would be a fair price" for the interests that he conveyed, but that "I could have got more for it." Fairchild, Pt. 2, at 67–68.[26] Judge Nixon executed three promissory notes (House Ex. 6, Pt. 3, at 190–92) providing for repayment of the $9,500 borrowed from Fairchild with 10 percent annual interest, due in full on February 25, 1983. During the same period when Judge

[26] At Judge Nixon's trial, experts provided conflicting testimony about the value of the mineral interests conveyed, with fair market value estimates ranging from the $9,500 that the Judge paid (Massey, Pt. 4A, Vol. II, at 1391–93), to more than $32,000 in 1980 and more than $53,000 in 1981. Jackson, Pt. 4A, Vol. I, at 1209–10.

Nixon was consummating his investment with Fairchild, Judge Nixon financed another oil investment with a third party by borrowing $10,000 from a commercial bank, repayable within 90 days, at an annual interest rate of 15 percent. House Ex. 41, Stip. 39–40, Pt. 3, at 428. Judge Nixon testified that he had intended to finance the Fairchild investment the same way, but that, when Ingram told him that the investment documents were ready, Ingram said that Fairchild would finance the investment at a reasonable interest rate set by Fairchild. Nixon, Pt. 2, at 230. Judge Nixon acknowledged that he now understands that the 10 percent rate that Fairchild set was below the market rate. Nixon, Pt. 2, at 245.

In May 1981, Judge Nixon stopped by Fairchild's office and expressed his appreciation for the investment opportunity. Nixon, Pt. 2, at 245. According to both men's testimony, after thanking Fairchild, Judge Nixon said to Fairchild, words to the effect that, "If I can ever help you, I will, and if I can't, I'll just tell you I can't." Fairchild, Pt. 2, at 50; Nixon, Pt. 2, at 231, 245–46. Judge Nixon explained that this "was just something that was normally said by me when I talked to someone. . . . If it was something illegal or something I couldn't do as a judge, [or] otherwise, I'd certainly want them to know that I couldn't and wouldn't do it. That's why I said it the way I did." Nixon, Pt. 2, at 231, 277. Fairchild agreed with Judge Nixon's counsel's characterization that Fairchild did not think that, by this statement, the Judge was "offering to do anything illegal . . . improper or wrong," and that Fairchild "just understood it as a statement of personal courtesy between two men doing a business deal." Fairchild, Pt. 2, at 70 (question of counsel).

Judge Nixon repaid the $9,500 to Fairchild's firm with interest, but only after receiving royalty payments from the wells in greater amounts than the repayments, so that he was never out-of-pocket. Judge Nixon repaid

much of his $9,500 obligation in advance of when repayment was due under the terms of the notes. House Ex. 41, Stip. 41–42, Pt. 3, at 428; Nixon, Pt. 2, at 230. Judge Nixon's investment with Fairchild turned out to be "an extremely good investment," which to date has returned more than $73,000 to Judge Nixon. Fairchild, Pt. 2, at 50; House Ex. 10, Pt. 3, at 219.

According to Judge Nixon, once only, in October 1982, while Fairchild was attending a judicial reception for Judge Nixon, Fairchild mentioned to Judge Nixon the possibility of another investment opportunity in which the Judge might be interested. Judge Nixon told the committee that he responded that he would be happy to discuss such an investment with Fairchild, but that nothing came of it and that, other than mentioning this conversation with Fairchild to Ingram in early 1983, Judge Nixon never raised the subject of a subsequent investment with either Fairchild or Ingram. Nixon, Pt. 2, at 231, 247–48. Ingram testified to the contrary, stating that Judge Nixon expressed to him the Judge's interest in investing further with Fairchild in the course of several telephone conversations and personal visits, during the same period as Judge Nixon's communication with Ingram about the Judge's conversations with Fairchild and Holmes. Ingram, Pt. 2, at 167.

B. DREW FAIRCHILD'S DRUG CASE

On August 4, 1980, an airplane with 2,200 pounds of marijuana was seized by Federal and local drug enforcement agents at the Hattiesburg Municipal Airport. Arrests were made at the scene and on August 19, 1980, an indictment was returned in Federal court against three of the smugglers. House Ex. 41, Stip. 49, Pt. 3, at 429.[27] Drew Fairchild, Wiley Fairchild's 50-year-old son, who co-managed the airport with an individual named Robert Royals, was a participant in the smuggling conspiracy but was not prosecuted at that time. House Ex.

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[27] The indictment appears as House Ex. 14, Pt. 3, at 240.

41, Stip. 50, Pt. 3, at 429. Wiley had not raised Drew, and their relationship had "been off and on, mostly off. . . . [I]t has never been good. . . ." Fairchild, Pt. 2, at 78. At the time when the drug arrests were made, Wiley and Drew were not "even speaking." Fairchild, Pt. 2, at 51.

Shortly after the indictment of the smugglers, Drew Fairchild and his lawyer, Bill Porter, approached Forrest County District Attorney Paul H. "Bud" Holmes, who was a very good friend of Porter's (Holmes, Pt. 2, at 93), to discuss Drew's legal situation. House Ex. 41, Stip. 51, Pt. 3, at 429. Holmes, who is currently 56, had been elected District Attorney in 1980 and served through 1983. Holmes, Pt. 2, at 89–90, 150. Holmes has also been in the casino business and is involved with a number of restaurant and nightclub ventures. Holmes, Pt. 2, at 90, 149. Holmes is known as an "expressive" and "colorful" person (Ingram, Pt. 2, at 183), who enjoys socializing and converses on the telephone a great deal. Holmes, Pt. 2, at 112. In Holmes' own words, "I let my mouth overload my fanny all the time." Holmes, Pt. 2, at 112.

In response to Porter's inquiry about Drew's situation, Holmes told Porter to speak with George Phillips, United States Attorney for the Southern District of Mississippi (and also a good friend of Holmes'), who was overseeing the Federal prosecution of the drug case, and to try to make a favorable deal. House Ex. 41, Stip. 52, Pt. 3, at 429; Holmes, Pt. 2, at 93, 117. As a result of discussions with the U.S. Attorney's Office, on November 19, 1980, Drew Fairchild entered into a written "Memorandum of Understanding" (House Ex. 15, Pt. 3, at 243), in which he agreed to plead guilty to Federal felony charges, pay a $15,000 fine, and receive a sentence of five years probation in return for cooperating with the Federal government in the drug case. House Ex. 41, Stip. 53, Pt. 3, at 429. Drew was subsequently debriefed by agents working with the U.S. Attorney's

Office, who concluded that Drew was not being completely cooperative. House Ex. 41, Stip. 54, Pt. 3, at 429.

In March 1981, Bill Porter sued Drew to collect a $10,000 legal fee in connection with his representation of Drew in the Federal criminal case. House Ex. 41, Stip. 55, Pt. 3, at 429; Nixon Ex. 4, Pt. 3, at 446. On July 3, 1981, Wiley Fairchild, Drew's father, paid Porter $2,669.19, approximately one-quarter of the fee that Porter claimed to be owing. House Ex. 41, Stip. 56, Pt. 3, at 429; Nixon Ex. 5, Pt. 3, at 451. Porter subsequently complained to Holmes about his inability to collect the full fee from Drew. House Ex. 41, Stip. 56, Pt. 3, at 429.

Holmes testified that he telephoned his friend Phillips to find out what had happened in the case in order to report on it to the State grand jury. Holmes, Pt. 2, at 93–94. Holmes said that he "jokingly" told Phillips that Porter had never been paid. Holmes, Pt. 2, at 94. Holmes testified that Phillips told him that Drew had broken his agreement and Phillips "said it would be fine with him if I [Holmes] presented the case [for state prosecution] since I already had my grand jury convened." Holmes, Pt. 2, at 94, 119–21. On cross examination Holmes conceded that he made the inquiry with Phillips "primarily" to help Porter collect his fee. Holmes, Pt. 2, at 121; Nixon Ex. 55, at 14, Pt. 3, at 1164.

On August 26, 1981, the Forrest County, Mississippi State grand jury indicted Drew and Robert Watkins, the pilot in the drug-smuggling conspiracy. House Ex. 41, Stip. 57, Pt. 3, at 429; House Ex. 16, Pt. 3, at 246. Holmes acknowledged that helping Porter collect his fee from Drew "was one of the" reasons that he indicted Drew in State court, but maintained that he would have indicted Drew anyway because "[t]he man was a drug smuggler." Holmes, Pt. 2, at 95, 121. Fairchild testified that he learned of Drew's indictment from Holmes, who telephoned him and said that if Fairchild would "get Carroll [Ingram] or Bill Porter or who to come down, I'll let him out on his own recognizance." Fairchild, Pt. 2,

at 52. Fairchild understood that Holmes "wanted to steer me to Bill Porter." Fairchild, Pt. 2, at 58.[28] Porter was retained and he accompanied Drew to his arraignment in State court on September 3, 1981. Porter demanded payment of the balance of his $10,000 fee "up front." On the same day, Wiley paid Porter $7,500 for the balance of the fee. Nixon Ex. 6, Pt. 3, at 452. In order to obtain the money, Wiley Fairchild made his son Drew turn over for sale oil leases that Drew owned. House Ex. 41, Stip. 58, Pt. 3, at 430; Fairchild, Pt. 2, at 83.

In December 1981, the pilot, Robert Watkins, was apprehended in Texas and proceedings were initiated to extradite Watkins to Mississippi for trial on the outstanding drug indictment. House Ex. 41, Stip. 59, Pt. 3, at 430; Holmes, Pt. 2, at 123.[29] On January 12, 1982, Drew pleaded guilty to the drug conspiracy charge pursuant to an oral agreement tracking the Federal plea agreement (Holmes, Pt. 2, at 95–96, 123, 152), and sentencing was set for March 19, 1982. House Ex. 17, Pt. 3, at 249.[30] Drew's sentencing was continued, first to July, then to August, and then to November, because Drew was recovering from back surgery. House Ex. 41, Stip. 60, 62, Pt. 3, at 430; House Ex. 18, Pt. 3, at 250. In May 1982, Watkins had failed to appear at a scheduled hearing and his bond was revoked. House Ex. 41, Stip. 61, Pt. 3, at 430. In October 1982, Watkins was apprehended again, this time in Florida, and new extradition proceedings were begun. House Ex. 41, Stip. 63, Pt. 3, at 430; Nixon Ex. 14, Pt. 3, at 480. In November, Drew's

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[28] Holmes testified that he does not recall calling Fairchild to tell him of Drew's indictment. Holmes, Pt. 2, at 141.

[29] The parties incorrectly stipulated that Watkins was apprehended in Florida, rather than Texas.

[30] The Federal agreement provided for 5 years probation and a maximum fine of $15,000. The State agreement called for 5 years probation and a fine of $5,000, which was the maximum fine under State law. Holmes, Pt. 2, at 152.

sentencing was continued once again, both because of his health problems and because of Watkins' apprehension and the expectation that he would be extradited to stand trial. House Ex. 41, Stip. 64, Pt. 3, at 430; Holmes, Pt. 2, at 96; House Ex. 18, Pt. 3, at 254.

On December 23, 1982, pursuant to a motion prepared at the direction of District Attorney Holmes (Holmes, Pt. 2, at 96–97), Drew Fairchild's drug case was "passed to the file" by order of Mississippi Circuit Judge Jack Weldy. House Ex. 19, Pt. 3, at 261. As a matter of local practice, this action meant that Drew's case was put on the inactive list. House Ex. 41, Stip. 65, Pt. 3, at 430. If a case were passed to the file and never reactivated, no further action would ever be taken on the case. Holmes, Pt. 2, at 96; Ingram, Pt. 2, at 164–65. Holmes testified that he knew of no prior case in which a case had been passed to the files after the defendant had pleaded guilty. Holmes, Pt. 2, at 96, 156.

In early January 1983, Circuit Judge Dickie McKenzie, who had defeated Judge Weldy in an election, took office. House Ex. 41, Stip. 67, Pt. 3, at 430. Judge McKenzie observed that the *Drew Fairchild* case had been passed to the file, expressed his concern about what had occurred, and the matter was reported in the local news media. House Ex. 41, Stip. 68, Pt. 3, at 430; Holmes, Pt. 2, at 104, 126; Nixon Ex. 15, Pt. 3, at 483, Nixon Ex. 73, Pt. 3, at 1534. Watkins was returned to Hattiesburg and arraigned on January 26, 1983. The same day, one month after Drew's case had been passed to the files, Judge McKenzie reinstated the case to the active docket on Holmes' motion. House Ex. 41, Stip. 69, Pt. 3, at 431; House Ex. 20, Pt. 3, at 263.

In December 1983, Holmes and Judge McKenzie visited Wiley Fairchild to discuss Drew's case. Holmes testified that the visit was prompted by Bill Porter's death in a private airplane crash the previous month and by the impending expiration of Holmes' term as district attorney at the end of the year. Holmes said that he had

promised Porter that Drew would be sentenced before Holmes left office and that he wanted to conclude the case. Holmes, Pt. 2, at 131. Holmes said that he telephoned Ingram, who told Holmes to talk to Wiley. Holmes, Pt. 2, at 131. Holmes testified that he asked Judge McKenzie to accompany him to visit Wiley, because "Wiley might have some questions and maybe you can explain them to him." Holmes, Pt. 2, at 131–32. Holmes testified that Wiley told Holmes at that meeting, " 'Well, since you have an agreement not to sentence him [Drew] until after he testifies, let's just leave it like it is.' So I left office with it still on the docket, waiting to be sentenced." Holmes, Pt. 2, at 105. Fairchild confirmed the visit but said that he did not understand its purpose. Fairchild, Pt. 2, at 62.

By a succession of court orders, Drew's sentencing was continued until early 1985. House Ex. 18, Pt. 3, at 250. On March 5, 1985, Federal prosecutor Reid Weingarten informed State District Attorney Glenn White (who had succeeded Bud Holmes after Holmes' term expired at the end of 1983, Holmes, Pt. 2, at 104–05, 150), of Drew's cooperation with Federal authorities, for consideration in connection with sentencing. Nixon Ex. 48, Pt. 3, at 1124. On March 8, 1985, upon being informed that District Attorney White and Judge McKenzie did not intend to honor the earlier plea agreement, Drew withdrew his guilty plea to the state charge, and the case was set for trial. Nixon Ex. 49–50, Pt. 3, at 1125–27.

The Department of Justice prosecuted Robert Royals, Drew Fairchild's co-manager at the Hattiesburg airport, who had never been prosecuted by Mississippi authorities. Royals was indicted by the Federal grand jury on February 22, 1985, was convicted, and was sentenced to three years imprisonment for his role in the drug-smuggling conspiracy. House Ex. 41, Stip. 86, Pt. 3, at 432; Nixon Ex. 51, Pt. 3, at 1128.

Drew's attorney contacted the Federal prosecutor to communicate the belief that Drew was being punished

by State authorities for his cooperation with the Federal government and to request that the Federal government also proceed against Drew. Nixon Ex. 58, Pt. 3, at 1235. On March 29, 1985, because of Drew's request and for other reasons (Nixon Ex. 51, Pt. 3, at 1128), the Federal grand jury in Hattiesburg indicted Drew on the drug conspiracy charge. Nixon Ex. 52, Pt. 3, at 1131. Drew pleaded guilty to the one-count indictment the same day. House Comm. Ex. 36, Pt. 4B, Vol. II, at 465.

Drew moved to dismiss the State charge on the grounds that under Mississippi law it was barred by the Federal indictment and conviction and that it violated the earlier State plea agreement. Ex. N-1 (k)-(l), Pt. 4B, Vol. II, at 711-21. Following the denial of both motions (Ex. N-1 (n)-(o), Pt. 4B, Vol. II, at 729-33), on July 8, 1985, Drew negotiated with the State prosecutor and judge a guilty plea on his State indictment and was sentenced to three years imprisonment and a $5,000 fine, with time to be credited for, and limited to, time served on the Federal charge. House Comm. Ex. 34-35, Pt. 4B, Vol. II, at 457-62. On July 11, 1985, Drew was sentenced on the Federal charge to three years imprisonment, with all but six months suspended, and two and one-half years probation. House Comm. Ex. 36, Pt. 4B, Vol. II, at 465-66.

IV. SUMMARY OF EVIDENCE RELATING TO JUDGE NIXON'S ALLEGED FALSE STATEMENTS

A. JUDGE NIXON'S CONVERSATIONS ON THE CRITICAL DAY

Section II-C contains a brief description of the conversations involving Judge Nixon that the House alleges Judge Nixon improperly concealed from the government. As noted there, the parties offered extensive contradictory evidence concerning the substance, date, purpose, and effect of these conversations. This section reviews that evidence and seeks to explain the bearing of the evidence on the parties' positions. The section first discusses the initial conversation between Judge Nixon and Wiley Fairchild, then describes the subsequent

conversations involving Judge Nixon and Bud Holmes and Wiley Fairchild, and concludes by examining the significance of the evidence adduced on the questions of the date of these conversations and of their effect.

1. The Conversation Between Judge Nixon and Wiley Fairchild

Judge Nixon's and Wiley Fairchild's testimony about their meeting was substantially similar.

a. Wiley Fairchild's Version

Wiley Fairchild testified that he came to feel that he was being blackmailed over the handling of his son Drew's drug case by Bud Holmes. The precipitating event for Wiley was a conversation with Robert Royals, Drew's co-manager of the Hattiesburg airport. Fairchild, Pt. 2, at 52, 79. Royals told Fairchild that he and Bill Porter had just been to the Maxwell Air Force Base Prison Camp visiting a mutual friend, Joe Krohn. Fairchild, Pt. 2, at 59. Royals told Fairchild that Porter had said to him that Drew's situation would be aided " '[i]f Drew would come up with some money.' " Fairchild, Pt. 2, at 52. Royals reported that when he had told Porter that Drew did not have any money, Porter had responded that " 'his old man has' " and that " 'if his old man knew he [Drew] was going to get his tail in a crack, he'd get up off his money.' " Fairchild, Pt. 2, at 52. Fairchild said his response to Royals was, "Bob, I got the message loud and clear. The answer is not 'No.' It's 'Hell, no.' " Fairchild, Pt. 2, at 52. Fairchild testified that he " 'was concerned because they were picking on [Drew] and not on Bob Royals, and I just believe then and I believe now, [that was] because my son's dad had money." Fairchild, Pt. 2, at 80.

On cross examination Fairchild acknowledged that Royals' visit was not the only event that had made him suspicious of Holmes' handling of Drew's case. Among the other factors that Judge Nixon's counsel elicited from Fairchild as contributing to his fear that he was being blackmailed by Holmes, and possibly Ingram,

were the fact that only Drew had been indicted following Porter's suit against Drew for his legal fees and Wiley's payment of only one-fourth of the total fee demanded; that Ingram had been the one who had brought to Wiley the order passing Drew's case to the files, even though Ingram was not representing Drew; that the passing of Drew's case to the files, and its subsequent reactivation, was generating adverse local publicity; and that Wiley had later received a visit about Drew's case from Holmes and Judge McKenzie. Fairchild, Pt. 2, at 56–62; Nixon Ex. 81, Pt. 3, at 1590.

Fairchild said that shortly after Royals' visit, he called Carroll Ingram to try to arrange a talk with Judge Nixon about the matter, because "I knew him and Bud and Carroll was good friends. I felt like I'd been done wrong." Fairchild added, "I wanted to talk to him about my son's case." Fairchild, Pt. 2, at 52–53. Subsequently—two or three days after the visit with Royals—Fairchild called Judge Nixon himself to arrange for a meeting. Fairchild, Pt. 2, at 52, 65–66. When asked why he thought "it would do any good," Fairchild said, "Well, that's just the way of life. Friends help friends. I didn't think it was because I had given him the oil and gas deal. That wasn't—because he had said, 'If I can ever help you, I will. If I can't, I just won't.' " Fairchild, Pt. 2, at 53. When asked if he had thought that Judge Nixon owed him a favor after the oil investment, Fairchild said, "Yeah. I figured he'd help me if he could." Fairchild, Pt. 2, at 53.

Fairchild testified that a day or two after his telephone call to Judge Nixon he met with the Judge in Fairchild's office. Fairchild, Pt. 2, at 54, 65. Fairchild testified, "I told him that I thought Bud Holmes was trying to blackmail me and I thought Carroll Ingram could be in there with him on it." Fairchild, Pt. 2, at 54. According to Fairchild, "What I said is they wasn't doing my son right and if they would go ahead and prosecute Bob Royals, they was in business together at

the airport and one of them is just as guilty as the other, and they wouldn't hear a damn word out of me. And that is the only time that I have discussed the *Drew Fairchild* case with the Judge." Fairchild, Pt. 2, at 68–69. Fairchild recalled that that was the only matter that he discussed with the Judge on that occasion. Fairchild, Pt. 2, at 77, 83–84. He emphasized that he told Judge Nixon that he wanted either Royals prosecuted or his son not to be prosecuted, but that he didn't "like the way he's [Holmes] picking on my son." Fairchild, Pt. 2, at 86. In response to questions from the committee, Fairchild said that he saw no way that he could have "got the point over" about his blackmail concern without discussing Drew's case with the Judge. Fairchild, Pt. 2, at 83.

Before the House subcommittee, Fairchild had described his meeting with Judge Nixon as follows:

> Well, I told him how—that Bud was treating my son, and I says, now my son is guilty as hell, but he's no more guilty than Bob Royals. If you're going to prosecute him, prosecute Bob Royals, and you won't hear a word out of me. . . . Well, I wanted him to see that justice was done. I didn't ask him to talk to Bud Holmes and help Drew out. . . . I knew he was a good friend of Bud Holmes. . . . I hoped that he'd tell him just what I'd said, and that is, if he's going to treat my son that way, go ahead and indict this other fellow. He's just as guilty.

Fairchild, Pt. 4B, Vol. I, at 177–78.

Fairchild testified that he had gotten "the impression" that the Judge would talk to Bud Holmes about Drew's case, because "I had helped him, and I didn't see no reason why he wouldn't help me if he—at least go talk to him." Fairchild, Pt. 2, at 54. Fairchild testified that he was "[a]bsolutely not" trying to affect the way that Drew's case was handled. He said that he "knew he [Judge Nixon] was a Federal judge and I had better judgment than to try to influence him, you know, ask

him specifically to go see if he couldn't do something about it. I figured what I told him, I figured what had happened is what did happen, you see." Fairchild, Pt. 2, at 80. Fairchild added, "I just thought that it was blackmail and I didn't ask the Judge to do something about it, I just told him that Bud wasn't treating me right and, if he was, he would go ahead and prosecute Bob Royals." Fairchild, Pt. 2, at 83.

b. Judge Nixon's Version

Judge Nixon's version of this meeting was substantially similar to Fairchild's, although the Judge recalls that he, not Fairchild, initiated the meeting. Judge Nixon testified that he had telephoned Fairchild to arrange a visit after paying off the promissory notes, because "I thought it would be a good opportunity to go by and talk to him." Nixon, Pt. 2, at 232. At Fairchild's office Judge Nixon found Wiley there with his brother, Rodney, whom Wiley "in a gruff voice" told to leave. Nixon, Pt. 2, at 232. Judge Nixon testified that the following exchange occurred between him and Wiley:

> He [Fairchild] said words to the effect that, "Judge, you're a good man. You've got a good reputation." He said, "I'm mad as hell." He said, "I've got a son who was involved in a drug matter at the Hattiesburg airport." And I said, "Yes, I read that in the paper." And he said, "I don't want to do a damn thing for him." He said, "He's been nothing but trouble all his life, given me trouble all his life, and I'm not asking you to do anything." He said, "But I'm tired of my name being drug through the news media," and he said, "My good name is just being ruined." And he said, "I think Bud Holmes is blackmailing me, and Carroll Ingram could be in on it." And he also mentioned that another person, whose name I didn't recall until—now I know it—had not been prosecuted, and he was just as guilty as his son.

Nixon, Pt. 2, at 233.

Judge Nixon testified that Fairchild "mentioned blackmail in connection with his son—with the case being drug through the news media and his good name being tarnished," but "that sometimes he [Fairchild] talks in riddles and you don't know what he's saying exactly." Nixon, Pt. 2, at 233. Nixon said that he got the "impression," although "it wasn't said," that Fairchild wanted him to talk to Holmes, "to pass that matter on to get it straightened out, the blackmail matter, yes." Nixon, Pt. 2, at 250. When asked why he had not told Fairchild that "talking with Mr. Holmes about Drew is one of the things I can't do to help you," Judge Nixon answered, "Because he didn't ask me to do anything, and when I left there, I didn't even intend to." Nixon, Pt. 2, at 251. Judge Nixon said that he "didn't tell him [Fairchild] I was going to do anything" (Nixon, Pt. 2, at 250), and that he may not have said anything in response because he was "almost speechless." Nixon, Pt. 2, at 233. Judge Nixon explained that his feeling at the time was that while he thought Fairchild "was sincere in what he was saying . . . I didn't think that Bud Holmes—and I knew that Carroll Ingram[—]would not be involved in any blackmail of anyone." Nixon, Pt. 2, at 233. Judge Nixon testified that he "thought it was just some figment of Mr. Fairchild's imagination, although a real figment at the time." Nixon, Pt. 2, at 233. Judge Nixon testified that during his "one-sided, by Fairchild," conversation, "I think I probably said, well, let me get out of here, to myself . . ." Nixon, Pt. 2, at 253. Judge Nixon also testified that "I guess I was very uncomfortable, if you want to put it that way. I wasn't exactly embarrassed. I might have used that word ill-advisedly, but it was a situation that I certainly wished that I had not been in." Nixon, Pt. 2, at 260.

2. The Conversations Between Judge Nixon and Bud Holmes, and Among Judge Nixon, Bud Holmes, and Wiley Fairchild

The parties agree that later that same day there was a conversation between Judge Nixon and Bud Holmes at Holmes' farm and a subsequent telephone call from the farm to Wiley Fairchild in which Judge Nixon and Holmes both spoke to Fairchild. The parties disagree on a number of important facts about those conversations. This section reviews the evidence and explains its bearing on the case.

a. Holmes' Version of the Initial Conversation

According to Bud Holmes, Judge Nixon visited him in his office in order to arrange to pick up turkeys that Holmes had been storing in his freezer for Judge Nixon (who had killed them while they were turkey hunting). Holmes, Pt. 2, at 97. Holmes said that the Judge came to Holmes' office, where a number of people were socializing. Holmes, Pt. 2, at 97. Holmes recalled that Ingram had accompanied the Judge (Holmes, Pt. 2, at 98), although Ingram has no recollection of having accompanied Judge Nixon to Holmes' office. Ingram, Pt. 2, at 172. Holmes testified that he drove Judge Nixon out to Holmes' farm in Holmes' car to retrieve the frozen turkeys. Holmes, Pt. 2, at 98. Holmes explained that afterwards he and the Judge were planning to meet other friends at a local nightclub (that Holmes and others owned) named "Bonnie and Clyde's," and that he drove the Judge there and finally drove him back to where the Judge had left his car. Holmes, Pt. 2, at 148.

Holmes said that during the ride to his farm Judge Nixon told Holmes that he had spoken with Wiley Fairchild and that "Wiley had asked him [Judge Nixon] to put in a good word for his boy." Holmes, Pt. 2, at 97. Holmes testified that the Judge "was very, very emphatic" that he was not asking Holmes to do anything. Holmes, Pt. 2, at 97. Holmes testified that Judge Nixon said: "'I'm not asking you to do anything, but Wiley

asked me if he and I weren't good friends, and I told him we were, and he said "Well, would you mind putting in a good word for my boy?"' And that's when he said, 'I'm not asking you to do anything; I don't want you to do anything. You have never asked me to do anything, against my oath of office, nor have I ever asked you to do anything against yours. But he did ask me to put in a good word for him.'" Holmes, Pt. 2, at 98.

Holmes said that he asked Judge Nixon, "'Are you talking about Drew?'" and that the Judge said, "'I don't know,' . . . and he didn't want to go into the facts, and we didn't." Holmes, Pt. 2, at 98–99. Holmes testified that he next said to the Judge, "'Well, my goodness, what does the man want—an apology?' I mean, you know, he's [Drew's] not going to jail; he's already going to get probation. As soon as he testifies against Watkins, the sentence is going to be imposed, and that's going to be it." Holmes, Pt. 2, at 97. According to Holmes, Judge Nixon asked if Wiley knew that his son "wasn't going to jail," and Holmes said that he did not know whether Wiley knew. Holmes, Pt. 2, at 99.

Holmes testified that his response to Judge Nixon's statement that Wiley had asked him to put in a good word for Drew was, "Well, if he wants to, hell, I'll just pass it to the file." Holmes, Pt. 2, at 99, 108. Holmes said that Judge Nixon responded, "Well, I'm not asking you to do anything." Holmes, Pt. 2, at 99. Holmes said that the Judge did not express "displeasure" when Holmes offered to pass the case to the files, but he emphasized that Judge Nixon "did not ask me to do it. I took it on myself. I wanted to make Judge Nixon look like a hero." Holmes, Pt. 2, at 100. Holmes estimated that this portion of their conversation lasted two or three minutes "[a]t the most." Holmes, Pt. 2, at 114.

Holmes denied that Judge Nixon said that Fairchild was complaining about Holmes' blackmailing him or about "unequal justice." Holmes, Pt. 2, at 100, 151; Holmes, Pt. 4B, Vol. I, at 248. Holmes said if Judge

Nixon had told him the allegation about blackmail he would have "immediately empaneled a grand jury and demanded an investigation." Holmes, Pt. 2, at 100. Holmes also testified that it "seemed" to him that during the ride to his farm the Judge had also said that he "was thinking about doing some more investments with him [Fairchild], or he was happy with them, or something to that effect." Holmes, Pt. 2, at 98.

b. Judge Nixon's Version of the Initial Conversation

Judge Nixon denied that he met with Bud Holmes in Holmes' office or rode with Holmes to Holmes' farm on the occasion of the conversation in question, and insists that he drove to Holmes' farm alone in his own car to borrow some Hank Williams, Sr., records from Holmes. Nixon, Pt. 2, at 234. According to Judge Nixon, the only relevant conversation between himself and Bud Holmes occurred at Holmes' farm. Nixon, Pt. 2, at 234-35. Judge Nixon testified that he had arranged the visit in a telephone call to Holmes before his visit to Fairchild. Nixon, Pt. 2, at 233-34. Judge Nixon testified that, because his conversation with Fairchild earlier in the day, "which I discounted, still weighed on my mind," he said to Holmes, " 'Bud, a matter that you're handling concerning Mr. Fairchild's son was brought up'—'he mentioned it to me and complained that you were blackmailing him.'" Nixon, Pt. 2, at 235. Nixon testified that he told Holmes "that Mr. Fairchild was complaining about a case that Mr. Holmes was handling involving his son." Nixon, Pt. 2, at 252. Judge Nixon testified that, despite the fact that he did not intend to do anything about Fairchild's complaint when he left Fairchild, "[w]hat I did was I passed along the complaint of Wiley Fairchild" in order "to let Bud Holmes know; it was for Bud Holmes' benefit, and, also, to try to get the matter straightened out, not for any other purpose." Nixon, Pt. 2, at 251.

According to Judge Nixon, Holmes responded, " 'The son of a bitch is paranoid. He's crazy.' He said, 'He's got so much money he'll never be able to spend it, and he thinks everybody's after his money all the time.' And he said, 'Let me tell you about that case.' " Nixon, Pt. 2, at 235.[31] Judge Nixon said he refused to hear about the case, "Because it would take Bud about five hours to tell you something that anyone else could tell you in about an hour or so." Nixon, Pt. 2, at 235. Judge Nixon said that there would have been nothing improper about his hearing about the case (Nixon, Pt. 2, at 282), but "it was getting late," he "wanted to pick out the records" he had gone to the farm to borrow, and he still had a two-hour drive home that night and wanted to see his wife, who was recovering from periodontal surgery, "as soon as I could." Nixon, Pt. 2, at 235.

c. Holmes' Version of the Telephone Conversation

Holmes testified that when he and Judge Nixon arrived at his farm the Judge came in for a drink. Holmes, Pt. 2, at 100.[32] Holmes said that either he or Judge Nixon proposed calling Wiley Fairchild to tell him "that his boy wasn't going to jail." Holmes, Pt. 2, at 101. According to Holmes, one of them placed the call, and then the Judge spoke first, "The man that we were talking about, I'm at his farm. I have good news. Your son isn't going to jail." Holmes, Pt. 2, at 101.

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[31] Holmes denied having made this statement, but said that "[i]t's probably an accurate statement." Holmes, Pt. 2, at 151.

[32] Both the Judge and Holmes agree that they had something to drink that evening, although estimates of the amount of alcohol consumed vary. Holmes told the committee that the Judge had had at least one drink and "maybe more" at Holmes' office and one or two drinks at Holmes' farm. Holmes, Pt. 2, at 101. Holmes told the House subcommittee that, all told, they each had 3 to 6 drinks that evening. Holmes, Pt. 4B, Vol. I, at 335. Judge Nixon testified that he "had a drink" with Holmes at the farm, but that Holmes "appeared to be pretty well inebriated" from earlier drinking. Nixon, Pt. 2, at 234-35.

Holmes said that Judge Nixon also told Fairchild that he was enjoying his friendship and "appreciated knowing him and thanked him for the opportunity that he had given him to work with him." Holmes, Pt. 2, at 101. Holmes testified that he then got on the phone and expressed his hope that there wasn't "any ill will" over the indictment of Wiley's son and said "when Judge Nixon asked me to do something, I'm glad to try to do it." Holmes, Pt. 2, at 101. Holmes emphasized that Judge Nixon "did not solicit me to make those statements." Holmes, Pt. 2, at 101. Holmes testified that, although he took what the Judge had said as a subtle way to try to influence him, "I don't think he asked me to do anything." Holmes, Pt. 2, at 146. Holmes said that he "was the aggressor in the thing" and "volunteered" to help Drew to "pick [the Judge] up some brownie points" with Fairchild. Holmes, Pt. 2, at 146.

d. Fairchild's Version of the Telephone Conversation

Fairchild testified that around seven o'clock of the same evening as his afternoon meeting with Judge Nixon, he received a call from Judge Nixon to this effect: " 'Wiley, you know that man you was talking about seeing?' And I said, 'Yeah?' He says, 'Well, I'm at his house, and everything's going to be taken care of to your satisfaction.' And I says, 'Thank you, Judge. I appreciate that.' " Fairchild, Pt. 2, at 54. Fairchild said Bud Holmes then got on the phone and said, " 'Wiley, when this man asks me to do something, I don't ask no questions. I just go ahead and do it.' " Fairchild, Pt. 2, at 54; Fairchild, Pt. 4B, Vol. I, at 178. Fairchild testified that Judge Nixon had placed the call (Fairchild, Pt. 2, at 54, 74), but he did not remember the Judge's discussing their investment. Fairchild, Pt. 2, at 64.[33] Fairchild

[33] According to grand jury testimony of Fairchild's lawyer at the time, Karl Kepper, Fairchild had initially reported that Holmes, not Judge Nixon, had spoken first on the telephone, Nixon Ex. 47,

Continued

testified that after the call he "thought it [Drew's case] would be passed to the files" (Fairchild, Pt. 2, at 55), but he also testified that there was no mention of passing the case to the files in the telephone call (Fairchild, Pt. 2, at 64, 80), and that he was not aware of the practice until, and was surprised when, it actually happened in Drew's case later. Fairchild, Pt. 2, at 59; Fairchild, Pt. 4B, Vol. I, at 195. Fairchild acknowledged that he had consumed about six drinks of alcohol by the time of the call, as was his daily habit (Fairchild, Pt. 2, at 54, 81), but insisted that he remembers the conversation clearly "because it was important to me." Fairchild, Pt. 2, at 81, 54.

e. Judge Nixon's Version of the Telephone Conversation

Judge Nixon's testimony differed significantly. Judge Nixon testified that while he was listening to Holmes' records, Holmes was placing telephone calls out of earshot across the room. He said that Holmes asked him to come over to him and handed him the phone, saying, " 'Here, talk to Wiley Fairchild; and I want to talk to him again after you finish.' " Nixon, Pt. 2, at 236. When he got on the phone, Judge Nixon testified, Fairchild said, " 'Judge, I'm glad you mentioned that matter to that fellow. I'm satisfied.' " Nixon, Pt. 2, at 236. Judge Nixon recalls responding, something to the effect, "Well, that's good. I'm glad it's resolved." Nixon, Pt. 2, at 236.

Asked what he thought the phone call had been about, Judge Nixon testified,

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at 10, Pt. 3, at 1115. Fairchild told the committee, "I don't remember it that way." Fairchild, Pt. 2, at 72. When Fairchild first told the government about the call, he related that the Judge spoke first on the telephone (Nixon Ex. 35, at 8, Pt. 3, at 962), although his assistant, John Baltar, has recalled Wiley's stating that Holmes spoke first. Baltar, Pt. 4C, at 31, 33; Nixon Ex. 36, at 3, Pt. 3, at 966.

> Well, the only thing I could surmise it was about was the thing that Mr. Fairchild had mentioned to me, the accusation of blackmail, which I had just passed along hoping—thinking it was, you know—looking back now in hindsight, it was a misunderstanding and that could be straightened out. And that's the only thing that I related to Bud Holmes. So I assume that's all it could have been about.

Nixon, Pt. 2, at 236–37.

Judge Nixon testified that after Holmes subsequently got off the phone with Fairchild, Judge Nixon "said, 'Bud, why did you do that?' What I meant by that was: Why did you just call me over there and put me on the phone without telling me what you were going to do? And he said, 'Well, I wanted to get the damn thing straightened out. It's all worked out anyway.' " Nixon, Pt. 2, at 236. Judge Nixon explained why he had once testified that he had been "disgusted" by this call:

> I was—yes, I said, "disgusted," and I think I used that word at one time. I didn't appreciate Bud Holmes just calling me over and handing me the telephone and saying, "Here, talk to Wiley Fairchild about that blackmail matter," is what—he didn't say it in those words, but "Here, talk to Wiley Fairchild," it only had—could be about the blackmail matter, because that's the only thing that either—Wiley had discussed with me and I had passed on to Bud Holmes.

Nixon, Pt. 2, at 260. Holmes testified that the Judge did not seem upset after the call. Holmes, Pt. 2, at 101–02.

3. Carroll Ingram's Secondhand Conversations

Ingram said Fairchild never mentioned his blackmail concerns to him. Ingram, Pt. 2, at 193. Ingram testified, generally, about Fairchild's attitude about his son's case:

> Mr. INGRAM. [Fairchild] expressed his displeasure with the circumstances of this case being on

> the State docket and it being in the press and causing a great deal of——
>
> The VICE CHAIRMAN [Senator Danforth]. But his concern was about the case and the way the case was being handled.
>
> Mr. INGRAM. That's correct, that it was in and out of the courts, and that it seemed to be resolved on one hand and then not resolved on the other.
>
> The VICE CHAIRMAN. Did he express concern to you about his family reputation, about the family name?
>
> Mr. INGRAM. Yes. I think in the context of the press, he was concerned that the family name, because it was being used—it wasn't just that it was Drew Fairchild's arrest that was being publicized, but the publicity came about being the son of a wealthy family and that sort of thing, in the town. So it was unpleasant publicity for Mr. Fairchild.

Ingram, Pt. 2, at 179.

Ingram testified that he received a call from Wiley Fairchild in "the latter part of 1982," before the case was passed to the files, that gave him the "impressions" that as a result of Fairchild's conversation with Judge Nixon, the Judge "would speak to Mr. Holmes about Drew Fairchild's case, and that Judge Nixon did that." Ingram, Pt. 2, at 165–66. In his House testimony, Ingram said that Fairchild told him that Fairchild had asked Judge Nixon "to speak to Bud Holmes about the case" and that the Judge had gotten back to him that Drew's case would be "OK." Ingram testified that he "got the sense" that Drew's plea agreement "was going to be honored." Ingram, Pt. 4B, Vol. I, at 373–75; Ingram, Pt. 4A, Vol. I, at 1066–69; Fairchild, Pt. 4A, Vol. I, at 210.

Ingram testified that he also had a conversation with Judge Nixon within a few weeks after the conversation with Fairchild "wherein he [Judge Nixon] related to me in an implied or understated manner that he had talked to Bud Holmes about this [the Drew Fairchild drug]

case." Ingram, Pt. 2, at 166, 190–91. Ingram testified that Judge Nixon told him that he "had spoken to Mr. Holmes as he had been requested to do by Mr. Fairchild, and there was a positive feeling about that, there was a positive reaction about that," and Judge Nixon "was pleased about that conversation." Ingram, Pt. 2, at 166. At Judge Nixon's trial, Ingram testified that Judge Nixon "just simply indicated to me that he had talked to Mr. Holmes about Drew Fairchild's case." Ingram, Pt. 4A, Vol. I, at 1070.

Ingram also said that, "[d]uring th[e] period of time" of this conversation with Judge Nixon, the Judge mentioned to him that he was interested in other investments with Fairchild. Ingram, Pt. 2, at 167. At Judge Nixon's trial, Ingram testified that contemporaneously with this conversation "Judge Nixon and Mr. Fairchild were working on other possible mineral transactions, mineral purchases." Ingram, Pt. 4A, Vol. I, at 1071. Judge Nixon testified that he mentioned to Ingram the possibility of further investments with Fairchild only once, in the same conversation in which he mentioned his conversations with Fairchild and Holmes about the handling of Drew's case. Nixon, Pt. 2, at 248–49.

4. The Date of These Conversations

One of the central differences between the parties concerns the date of these conversations between Fairchild and Judge Nixon, Judge Nixon and Holmes, and Fairchild, Holmes, and Judge Nixon. Both sides agree, and all evidence confirms, that the three conversations occurred on the same day. Where the parties disagree is when that day was. The House contends that the conversations occurred sometime in 1982, most likely on May 14, 1982, but in any event before December 23, 1982. Judge Nixon maintains that the conversations did not occur until March 11, 1983. The significance of this disagreement is whether the conversations preceded the passing of Drew Fairchild's drug case to the files on December 23, 1982, or followed that event. If the conversa-

tions occurred before Holmes passed Drew's case to the files, then the House managers would argue that Judge Nixon influenced Holmes' handling of the case, as the House alleges that Judge Nixon falsely denied having done in Articles II and III (2)(G). On the other hand, if Judge Nixon's conversations did not occur until after December 23, 1982, then Judge Nixon would argue that he could not have influenced the handling of Drew's case and, hence, did not testify falsely as alleged in those articles. Substantial evidence presented to the committee, as at Judge Nixon's criminal trial, concerned this issue.

a. Evidence Supporting 1982

The House relies principally upon the testimony of Fairchild, Holmes, and Ingram to support its contention that these conversations occurred in 1982, because Drew's case was passed to the files.

Wiley Fairchild testified that he was "just almost a hundred percent positive" that his conversation with Judge Nixon occurred before Drew's drug case was passed to the files in December 1982. Fairchild, Pt. 2, at 55. Fairchild said that his meeting with Judge Nixon was within a few days of Robert Royals' visit and was triggered by the concerns raised by his conversation with Royals. Fairchild, Pt. 2, at 52–54, 64–66, 76. Fairchild testified that Royals told him that he and Bill Porter, Drew's attorney, had just been visiting Joe Krohn, a mutual friend, in the prison at Maxwell Air Force Base. Fairchild, Pt. 2, at 65. On direct examination, Fairchild identified a record of a telephone call from his company to Judge Nixon's chambers on December 1, 1982 (House Ex. 40, Pt. 3, at 423), as probably having been his call to the Judge to arrange the meeting concerning the handling of Drew's case. Fairchild, Pt. 2, at 53. However, on cross examination, Fairchild acknowledged that that call could have been an unrelated call from one of his employees to the Judge's secretary to discuss financial details about the investment,

and that he was "not positive" that it was his call to Judge Nixon to arrange a meeting. Fairchild, Pt. 2, at 65.[34]

Further, Fairchild was informed of a document showing that Krohn, the individual whom Royals reported having visited at Maxwell Air Force Base just before Royals visited Fairchild, had been transferred from Maxwell on June 22, 1982. Nixon Ex. 44, Pt. 3, at 1027. The implication of that fact is that Royals' visit either had not triggered Fairchild's call to Judge Nixon or had done so before June 1982. Fairchild said that the December 1, 1982 placement "could have been [off] but I just don't think so." Fairchild, Pt. 2, at 66. Fairchild reiterated that "to the best of my recollection it [Drew's case] hadn't been passed to the files" at the time of his conversations with Judge Nixon. Fairchild, Pt. 2, at 76. Fairchild testified that Ingram brought him the order passing Drew's case to the files "[n]ot too long after" the conversations with Judge Nixon. Fairchild, Pt. 2, at 55.[35]

Bud Holmes likewise testified that the conversations took place before Drew Fairchild's case was passed to the files in December 1982. Holmes, Pt. 2, at 97. Holmes placed the conversations "like in May of—or, April of

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[34] Judge Nixon introduced into evidence his pocket calendar, which reflected that he was quail-hunting on December 1, 1982. Nixon Ex. 78, Pt. 3, at 1579; Pt. 2, at 313–14 (statement of counsel). He also offered a declaration of his secretary showing that there had been no telephone message from Fairchild to Judge Nixon's chambers on December 1 and stating that she was assembling the Judge's financial records on that day and that it is her "firm belief" that that call was received by her in response to her request for financial information from Fairchild's office. Nixon Ex. 79, Pt. 3, at 1583; Pt. 2, at 314 (statement of counsel).

[35] The December 1 date also does not conform to Holmes' recollection that the purpose of Judge Nixon's visit to Holmes' farm was to retrieve from Holmes' freezer turkeys that the Judge had killed a few weeks earlier, because the turkey-hunting season in Mississippi is in the spring through April. Holmes, Pt. 2, at 128–29.

1982—I don't remember the exact date." Holmes, Pt. 2, at 97. Holmes testified that he believes that the conversations occurred on May 14, 1982, although they "could have taken place on another date. He [Judge Nixon] was at my farm on other occasions." Holmes, Pt. 2, at 104.[36]

Holmes asserts that his recollection was refreshed by two documents. First, he recalled that Ingram accompanied Judge Nixon to Holmes' office on the day in question and that that day was a Friday. An office log maintained by Holmes' secretary includes entries for Ingram and Judge Nixon on Thursday, May 13, 1982. House Ex. 21, Pt. 3, at 267; Holmes, Pt. 2, at 97. Holmes testified that his secretary had said that she had erroneously entered the names on May 13 instead of Friday, May 14. Holmes, Pt. 2, at 103–04.

Second, Holmes testified that, after he and Judge Nixon telephoned Fairchild from his farm, they went to a party at Bonnie and Clyde's nightclub, where Holmes' girlfriend and his secretary had an altercation after the Judge had left. Holmes testified that this event happened the evening before he attended a wedding in Jackson, Mississippi, of a friend of his, Gary Turner, who, records reflect, was married on May 15, 1982. Holmes, Pt. 2, at 104, 129; House Ex. 22, Pt. 3, at 271.

Holmes' recollection is also potentially corroborated by a telephone record, not available before this proceeding, that reflects two telephone calls charged to Judge Nixon's chambers, placed from Ingram's office on May 14, 1982, at 4:15 p.m., and from Holmes' office at 5:13

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[36] Holmes stated previously that the conversations occurred a year after Drew's plea agreement in January 1982, which would place the conversations closer to March 1983 than to May 1982. Nixon Ex. 56, at 1, 12–13, Pt. 3, at 1214, 1226–27; Holmes, Pt. 2, at 130–31. At his grand jury appearance on February 21, 1985, Holmes testified that the conversations could have occurred in the spring of either 1982 or 1983. Nixon Ex. 46, at 53, Pt. 3, at 1085; Holmes, Pt. 2, at 129.

p.m. the same day. House Ex. 42, Pt. 3, at 438–39. Holmes testified that, regardless of their specific date, the conversations took place before Drew's case was passed to the files. Holmes, Pt. 2, at 104. He testified that, although Judge Nixon had once borrowed Hank Williams, Sr., records from him, he does not recall when that occurred. Holmes, Pt. 2, at 130.

Finally, Ingram testified that the conversation in which Fairchild told him about Fairchild's conversations with Judge Nixon occurred before Drew's case was passed to the file. Ingram, Pt. 2, at 166. Ingram also said that, "look[ing] back on the situation," he later "could relate" the conversation in which Judge Nixon told him of the Judge's conversations with Fairchild and Holmes "to that time and that act" of passing the case to the files. Ingram, Pt. 2, at 167.[37]

b. Evidence Supporting 1983

Judge Nixon relies upon his own testimony, as well as the prior testimony of others and circumstantial evidence, to support his contention that his conversations with Fairchild and Holmes followed, and therefore could not have influenced, Holmes' passing of Drew's case to the files in December 1982.

Judge Nixon testified that the conversations at issue took place on March 11, 1983, while Judge Nixon was in Hattiesburg trying a bank robbery case. Nixon, Pt. 2, at 232, 284. He fixed the date of the conversations based on two other events. First, Judge Nixon said that his visit to Fairchild was scheduled following his final repayment of the investment debt to Fairchild, which oc-

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[37] Ingram previously testified that he was not certain about the relation in time between the conversations and the passing of Drew's case. In his earlier testimony, Ingram had placed the conversation with Fairchild "in late 1982," but he testified that it could have occurred within three or four months of that time in either direction. Ingram, Pt. 4B, Vol. I, at 401–03, 412; Ingram, Pt. 4A, Vol. I, at 1150.

curred in early March 1983. Nixon, Pt. 2, at 232, 266.[38] Second, Judge Nixon recalled that his visit to Holmes' farm occurred at a time when his wife was recovering from periodontal surgery. Nixon, Pt. 2, at 232, 310.

Judge Nixon also testified that the conversations must have occurred after the case was passed to the files, because during the conversation with Wiley Fairchild Judge Nixon remembered referring to a newspaper article that had criticized Holmes' actions in passing Drew's case to the files and subsequently returning it to active status in January 1983. Nixon, Pt. 2, at 255, 297, 316. Judge Nixon testified that a phone message dated March 11, 1983, from Bud Holmes, saying that Holmes "will wait in his office for your call" (Nixon Ex. 17, Pt. 3, at 485), was consistent with Judge Nixon's recollection of meeting with Holmes that day, although he does not independently recall the telephone message. Nixon, Pt. 2, at 234.

Judge Nixon testified that he had no recollection about being in Ingram's and Holmes' offices on May 14, 1982, as reflected in telephone records. Nixon, Pt. 2, at 258. At his criminal trial, Judge Nixon testified that he was "positive" that he had not been in Hattiesburg at all on May 14, 1982 (Nixon, Pt. 4A, Vol. II, at 1557), although records document that the Judge had visited a dentist in Hattiesburg on that day. House Ex. 27, Pt. 3, at 301. Before the committee Judge Nixon explained that that testimony had been "an honest mistake." Nixon, Pt. 2, at 256, 238. Judge Nixon admitted that he had been in Hattiesburg on May 14, 1982, but he said that was not the occasion on which he had borrowed Holmes' records and had these conversations. Nixon, Pt. 2, at 238. He also testified that he had once "picked up

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[38] Judge Nixon testified that he repaid the notes in February 1983. Nixon, Pt. 2, at 232, 266. The notes were due on February 25, 1983, but were actually paid off on March 7, 1983. House Ex. 6, Pt. 3, at 190.

some turkeys" from Holmes, but not on the occasion of these conversations. Nixon, Pt. 2, at 313.

Regarding Ingram's testimony that the Judge told him of the Judge's conversations with Fairchild and Holmes, Judge Nixon recalled the conversation with Ingram, but testified that it occurred in the "first part of 1983" (Nixon, Pt. 2, at 249), "just a week, a couple of weeks maybe, or so" after his conversations with Fairchild and Holmes. Nixon, Pt. 2, at 237. Judge Nixon described the conversation as follows: "Well, I told Carroll, in a telephone conversation which we were having, in which I remember telling him about Mr. Fairchild had mentioned another investment, but nothing more had come of it; that Mr. Fairchild had mentioned a matter to me which I had passed along to Bud Holmes and it was apparently straightened out, just in those words and no more detail, and Carroll didn't ask me anything about it." Nixon, Pt. 2, at 237, 249.

Judge Nixon's contention that the conversations occurred after Drew's case had been passed to the files was corroborated by Fairchild's earlier testimony at Judge Nixon's post-conviction hearing, where Fairchild said, "the best of my recollection is that it [the conversation] was made after it [the case] was passed to the files." Fairchild, Pt. 4C, at 201–02. Fairchild told the committee that, when he testified that way, "I was going strictly on what my brother Rodney had said," and "I have never been as confused in my life as I was at that hearing in Jackson. I may have got some things wrong but it wasn't intentionally. I was just confused." Fairchild, Pt. 2, at 75.[39] On cross examination, Judge Nixon's counsel asked Fairchild whether both his con-

[39] Wiley's brother, Rodney, was present when Judge Nixon first arrived to meet with Wiley, and Rodney has placed the meeting "at about the time of the publicity concerning Drew's case being passed to the file . . ., although I do not specifically remember if this event was before or after the case was passed to the file." Nixon Ex. 77, Pt. 3, at 1564.

cern about adverse publicity over Drew's case and his suspicion that Ingram may have been involved in Holmes' blackmail effort did not suggest that Fairchild's conversation with Judge Nixon had occurred after Drew's case was passed to the files, on the reasoning that it was the passing of the case that prompted the most publicity[40] and it was Ingram's bringing to Fairchild the order passing the case that provided a basis for suspecting Ingram's involvement. Fairchild, Pt. 2, at 60, 67 (questions of counsel). Fairchild ultimately responded, "I can't help you out on them dates and them phone calls. What I have testified at the trial and the congressional committee is just the best of my recollection and I think it is so." Fairchild, Pt. 2, at 67.

5. Whether Judge Nixon's Conversation With Holmes Influenced Holmes' Decision to Pass Drew Fairchild's Case to the Files

The controversy over the date of the conversations involving Fairchild, Holmes, and Judge Nixon is important because it bears on the issue whether Judge Nixon influenced Holmes' handling of Drew's case, which is implicated by the House's charge in Articles II and III(2)(G). If the conversations postdated the passing of Drew's case, as Judge Nixon contends, then they obviously could not have contributed to Holmes' decision to pass the case. However, if the conversations preceded the passing, as the House maintains, then the issue remains whether the conversations influenced Holmes' decision to pass the case to the files. This section reviews the evidence on this question.

Pursuant to a motion filed at Holmes' direction (Holmes, Pt. 2, at 96–97), Drew's case was passed to the files (where it would have remained in inactive status

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[40] Judge Nixon introduced evidence that the Hattiesburg and Jackson, Mississippi newspapers had no articles about Drew's case between January 1982 and January 1983. Nixon Ex. 76, Pt. 3, at 1559.

had it not been returned to the active docket 33 days later) by order of Judge Weldy on December 23, 1982. House Ex. 19, Pt. 3, at 261. Holmes called Ingram and told him about the order passing the case, and Ingram picked the order up and delivered it to Wiley Fairchild. Fairchild, Pt. 2, at 55; Ingram, Pt. 4B, Vol. I, at 376–77. Fairchild testified that he was both "surprised" and "proud" that Drew's case had been passed to the files. Fairchild, Pt. 2, at 59–60.

The immediately precipitating event for Holmes' action passing Drew's case to the files was a visit from Drew's lawyer, Bill Porter. Porter had supported Judge Weldy for reelection and Judge Weldy had been defeated by Dickie McKenzie. Porter was concerned that Judge McKenzie might not honor Drew's plea agreement. In Holmes' words, Porter's concern "was very real, because Judge McKenzie had a right to totally ignore any agreement I had. He [Porter] had a client out there that pled guilty and was just naked out there." Holmes, Pt. 2, at 125–26, 102.

Holmes testified that he passed Drew's case to the files both because of Porter's concern and because "I knew I had made the statement" to Judge Nixon and Fairchild seven months earlier promising to pass the case to the files. Holmes, Pt. 2, at 102, 157–58; Holmes, Pt. 4B, Vol. I, at 253–57. Holmes said that passing the case "seemed like the easy thing to do" and "just seemed to answer a lot of different questions." Holmes, Pt. 2, at 102. When asked whether he would have passed the case to the files had it not been for his earlier conversations with the Judge and Fairchild, Holmes responded, "I don't think so." Holmes, Pt. 2, at 102. On cross examination, Holmes would not say whether he would have passed the case to the files had it not been for Porter's communication in December. Holmes responded that "there are a lot of 'ifs' in there. I know what did happen," although he conceded that Porter's communication "was certainly a motivating factor. It

was one of the—is one of the things. There was a number of factors that are into it." Holmes, Pt. 2, at 126.

Holmes repudiated a declaration that he had executed for use at Judge Nixon's post-conviction proceeding, in which Holmes had declared, "I was not influenced in any way in my handling of the Drew Fairchild matter by this brief exchange with Nixon. My office took no action, nor failed to take any action, with respect to the Drew Fairchild matter because of that brief exchange I had with Nixon." Nixon Ex. 66, Pt. 3, at 1428. Holmes told the committee that the declaration is "not accurate," that he did not prepare it, nor edit it, because he misinterpreted it when he first read it, and that he signed the declaration because "I wanted to help the Judge any way I could." Holmes, Pt. 2, at 103.

Holmes testified that he does not "know exactly what my state of mind was at the time" that he had originally offered to pass Drew's case to the files. Holmes, Pt. 2, at 103. In answer to the question from the vice chairman, "Did you take what he [Judge Nixon] said as a subtle way to try to influence what you would do with the case," Holmes said, "Yes, sir. I was the aggressor in the thing. I went forward and said, Well shoot, let's pick you up some brownie points; it's no skin off my teeth." Holmes, Pt. 2, at 146. Holmes continued, "I was trying to, you know, 'Judge we'll get you credit for it.' I don't care. I mean, if he [Fairchild] doesn't know his boy is not going to jail, and it's already been cut four months ago we'll let you get the credit for it." Holmes, Pt. 2, at 146.

When questioned about inconsistencies in his prior testimony regarding his intent at the time of the conversations, Holmes responded, "You can use any one [of my answers] you want." Holmes, Pt. 2, at 144. Holmes said that he had thought that, after the fugitive pilot, Robert Watkins, was apprehended, extradited, and convicted, "then Drew would go ahead and be sentenced, he

wouldn't be going to jail, and that would be the end of it." Holmes, Pt. 2, at 103. In Holmes' words, "I assumed that . . . the thing would go away, and Judge Nixon would look like a hero, and nothing would have been affected." Holmes, Pt. 2, at 102, 100. Holmes explained,

> The truth of the matter is that at the time out at the farm when I talked to Mr. Fairchild, and I told him I would pass the thing to the file, I wasn't thinking real clear because the next day I remember I had thought about it, and I said that wasn't a very smart thing to do. My thought process was that Watkins will come on in; he will then be sentenced or we'll try; then Drew Fairchild, who had already pled guilty to a felony, would then be sentenced to probation, he'd pay his fine, and everything would go away; that it would go right on down the line like that.
>
> Come December, at the end of the time, when Judge Weldy was getting ready to leave the bench, I had made the promise that I would pass the thing to file, and I felt like I needed to go ahead and live up to my commitment. Bill Porter had said something to me about it, so I went ahead and passed the thing to the file because I had told Mr. Fairchild I was going to.

Holmes, Pt. 2, at 144; Holmes, Pt. 4B, Vol. I, at 258.[41]

The motion to pass Drew's case to the files identifies only Watkins' fugitive status and the need to postpone sentencing Drew until Watkins' apprehension and trial as the reason to pass the case to the files. House Ex. 19, Pt. 3, at 261. In a videotaped television news interview of Holmes in January 1987, which was shown to the committee (Nixon Ex. 73, Pt. 3, at 1534), Holmes gave a similar reason for his passing Drew's case to the file. Pt. 2, at 127 (videotape). Holmes explained, "I just didn't

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[41] Neither Holmes nor Fairchild was entirely clear or consistent about whether Holmes had promised Fairchild that he would pass Drew's case to the files. Holmes, Pt. 2, at 101–02, 108, 141; Fairchild, Pt. 2, at 55, 64, 80–81; Holmes, Pt. 4B, Vol. I, at 292, 307, 318.

tell it all," because "I just didn't, didn't feel—it would have been real nice to get up and say, well, not 7 months ago Judge Nixon and I were at my farm, we called Wiley and said we were going to pass it to the file." Holmes, Pt. 2, at 128.

Judge Nixon relies principally upon his contention that his conversation with Holmes was in 1983 as evidence that it did not influence Holmes to pass Drew's case to the files in December 1982. Alternatively, Judge Nixon maintains that, even if the conversation preceded and in part influenced Holmes, Judge Nixon had no knowledge of that fact. In response to a question from Senator Heflin, Judge Nixon testified,

> [I]t's my position that nothing that I said on that day influenced anyone. I certainly didn't know it did. If it did, it was without my knowledge. So when I tell you now that it didn't in my judgment and opinion, I think I'm correct. Because even taking Bud Holmes' testimony, considering it to be true, he stated that he said he was going to do—he would do something for Drew Fairchild, and I told him I didn't want to do anything. And when you tell someone that twice or more, as he testified, I think you can assume that you hadn't influenced anybody. I never knew about any case being passed to the files or anything else. I heard nothing more about that matter from that day until Reid Weingarten and Ken White-Spunner came to see me on April 19, 1984.

Nixon, Pt. 2, at 316–17.

B. THE GOVERNMENT INVESTIGATION AND PROSECUTIONS

The initial event that triggered the Federal government's investigation into the handling of the *Drew Fairchild* case and Judge Nixon's investment relationship with Wiley Fairchild was a telephone call to the Federal Bureau of Investigation from an anonymous informant on November 3, 1983. White-Spunner, Pt. 2, at 17–18. The informant, who later identified himself as Robert L. "Skip" Jarvis, a former employee of Wiley

Fairchild's firm and presently an Assistant States Attorney in Florida, suggested to the FBI that Wiley may have conveyed mineral interests to Judge Nixon as a bribe for favorable treatment in Drew's drug case. House Ex. 41, Stip. 74–75, Pt. 3, at 431; Nixon Ex. 18–19, Pt. 3, at 486–541; Nixon Ex. 21, Pt. 3, at 545. Based on this allegation, the Public Integrity Section of the Department of Justice commenced an investigation, with the assistance of the FBI, in the spring of 1984, into Judge Nixon's investment with Wiley Fairchild and the handling of the Drew Fairchild drug case. House Ex. 41, Stip. 76, Pt. 3, at 431. Contemporaneously, Wiley Fairchild contacted authorities through an assistant, John Baltar, to complain about being blackmailed in the handling of Drew's case. Fairchild, Pt. 2, at 62; Nixon Ex. 22–23, Pt. 3, at 486–90.

1. Judge Nixon's Interview of April 19, 1984

As part of the government's investigation, on April 19, 1984, Reid Weingarten, a Public Integrity Section attorney, and Kenneth White-Spunner, an FBI agent, interviewed Judge Nixon in the Judge's chambers in Biloxi, Mississippi, and tape-recorded the interview with the Judge's consent. House Ex. 41, Stip. 77–78, Pt. 3, at 431–32; House Ex. 1, Pt. 3, at 1.

During this interview Judge Nixon made the statements that underlie the House's contention in Article III that Judge Nixon concealed his conversations with Wiley Fairchild, Holmes, and Ingram concerning Drew's drug case. The seven specific statements in Judge Nixon's interview that the House alleges to be "material false or misleading statements knowingly made" are contained in Article III (1)(A)–(G), which is reprinted in Addendum A. These statements appear in their immediate context in the interview in House Ex. 3A, Pt. 3, at 147–60. The full transcript of the interview is House Ex. 1, Pt. 3, at 1–51.

Judge Nixon testified that, prior to the investigators' arrival in his chambers, he did not know the subject of

the interview (Nixon, Pt. 2, at 238), but that before the tape recorder was turned on, Weingarten "told me that he was down investigating and wanted to talk to me about an oil and gas transaction that I had with Wiley Fairchild, which they thought might be an imbalanced transaction, in the handling of the Wiley Fairchild's son's drug smuggling case on the Federal level and whether there was any connection between the two." Nixon, Pt. 2, at 239. Judge Nixon said that the investigators were "investigating to determine whether I had in any way influenced the handling of that case in Federal court, or the steering of that case from Federal to State court, which he [Weingarten] mentioned to me during the interview and before." Nixon, Pt. 2, at 239.

Judge Nixon testified that he had attempted to answer truthfully during that interview (Nixon, Pt. 2, at 239), but that he "honestly did not" think of his conversation with Wiley Fairchild or the telephone call from Holmes' farm to Fairchild during the interview. Nixon, Pt. 2, at 239. Judge Nixon said that he did not know, and could only "surmise," why those conversations had not come to mind. Nixon, Pt. 2, at 239. He said that he "[c]ertainly" would have disclosed those conversations if he had been asked whether Wiley Fairchild had complained about being blackmailed and that he "had nothing at all to hide." Nixon, Pt. 2, at 239. The interview with Judge Nixon occurred nine days after Wiley Fairchild had expressed his blackmail allegations to the FBI, and one day after Fairchild had repeatedly expressed them again to Skip Jarvis during a tape-recorded conversation. Nixon Ex. 22, Pt. 3, at 586; Nixon Ex. 25, Pt. 3, at 593; House Ex. 1, Pt. 3, at 1.

On cross examination, Judge Nixon was asked about his testimony regarding his understanding of the limited nature of the government's investigation in view of the following exchange during the interview:

NIXON. Well what's the allegation?

> WEINGARTEN. The allegation is that the Fairchild case was mishandled, number one, and in the course——
>
> NIXON. By whom?
>
> WEINGARTEN. Well, that's loose, frankly, and, and we're obliged by the information to look at it from top to bottom, from the bust in August, 1980, until today. And that's, generally speaking, the allegation, and in the course of receiving the information, it was alleged as well that there was a, a, a, transfer of property, an imbalance[d] transfer of property to you from Wiley Fairchild. That's the sum and substance of it.

House Ex. 1, at 37–38, Pt. 3, at 37–38. Judge Nixon responded, "Exactly. That's exactly what he told me before the tape was turned on. He said it was on the Federal level, and whether there was a connection between that and the oil and gas transaction, which he says again here, and whether there was a connection. . . ." Nixon, Pt. 2, at 261. Judge Nixon testified that, "as far as I was concerned," the investigation did not concern the handling of the State case. Nixon, Pt. 2, at 262. When asked why in that event Judge Nixon's press release the day following his grand jury appearance referred to the "investigation of the handling of a State drug case against Drew Fairchild" (House Comm. Ex. 24, Pt. 4B, Vol. II, at 367), Judge Nixon responded, "Because that's where the case was at that particular time. It was no longer in Federal court. It was a State court case. Apparently that's what he told me, and that's I think, what the record shows." Nixon, Pt. 2, at 262.

Pressed as to whether at the time of his interview he had been aware that he had met with Fairchild and spoken to Fairchild from Holmes' farm about Drew's case, Judge Nixon responded, "No, sir; that's it. I was not—that was somewhere in my mind, I'm sure, in my recollect, but it was not foremost, and no question was asked to even trigger that; and I wish he had asked it. If he was investigating it from top to bottom, I don't

know why he didn't ask me about the blackmail allegation." Nixon, Pt. 2, at 262.

Judge Nixon was read the following exchange from his testimony before the House:

> Mr. STEWART [Judge Nixon's counsel]. Now at the time you gave that interview with Mr. Weingarten—and this is April of 1984—were you aware, at some level, that you had had this previous conversation you have described in March of 1983 with Mr. Fairchild concerning his blackmail allegation?
>
> Judge NIXON. Well, of course I knew it had occurred. It was, I am sure, in my recollect, but it wasn't foremost of course in my mind.

Nixon, Pt. 4B, Vol. I, at 443. The Judge responded, "Exactly what I said, and no question was asked to trigger it. I simply did not recall it at the time." Nixon, Pt. 2, at 263. He explained, "I was just hit cold on matters that had happened, apparently, from one to five years before. . . ." Nixon, Pt. 2, at 263.[42] At Judge Nixon's criminal trial, however, the following exchange occurred between Weingarten and Judge Nixon:

> Q. In your mind at that moment [at the interview when we discussed the *Drew Fairchild* case] did you recall the allegation by Wiley Fairchild?
>
> A. What allegation?
>
> Q. About Bud Holmes blackmail.
>
> A. Complaint?
>
> Q. Yes.
>
> A. Yes.

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[42] Judge Nixon had also given this answer to the same question in his testimony before the House: "Well, of course it was in my recollect, my mind. I knew it had happened is what I mean, but it wasn't foremost in my mind, at all, because of the reasons I've already stated. I thought it was nonsense. I thought it was a misunderstanding. It was apparently cleared up, and over with that evening, and I heard nothing more about it." Nixon, Pt. 4B, Vol. I, at 506.

Q. And you didn't volunteer it at that time?
A. No, I told you why not. I wasn't asked about it.

Nixon, Pt. 4A, Vol. II, at 1710–11. Judge Nixon's affirmative response at trial to the question whether he "recall[ed]" his conversation with Fairchild "[i]n your mind at that moment" of the interview contrasts with his negative response to similar questions before the committee.

Judge Nixon told the committee that, apart from the fact that he had not remembered his conversations with Fairchild and Holmes at the time of his interview, he had since reviewed the transcript of his interview and he thought that his answers had been, nonetheless, truthful. Nixon, Pt. 2, at 240.[43] When asked about the following exchange,

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[43] However, for a number of his interview statements, Judge Nixon relied solely or principally upon his lack of recollection at the time rather than seeking to explain the truth of his statements. For example, when he was read this exchange,

WEINGARTEN. From the time of that bust until basically me talking to you about the case——

NIXON. Uh-huh——

WEINGARTEN. You've had no connection, no knowledge of it, and no participation in——

NIXON. Correct——

WEINGARTEN. The *Drew Fairchild* case?

NIXON. Absolutely, except something I read in the paper."

House Ex. 1, at 31, Pt. 3, at 31, Judge Nixon said, "I had no recall about that March 11 conversation, because it amounted to nothing." Nixon, Pt. 2, at 265. When pressed about whether the statement was true, the Judge responded, "I told you that in my judgment it was true when I made it. I had no intent to hide anything. Certainly, there was nothing there to hide. There was no, no crime of any kind, no illegal activity, no nothing. If I had thought about it, I certainly would have mentioned it, but I did not think about it." Nixon, Pt. 2, at 265. Before the House, Judge Nixon had testified that he believed that his response was accurate because he had thought that Weingarten was asking whether he had had any involvement in Drew's case at the Federal level through any offi-

Continued

> WEINGARTEN. Was there any other possible business that you discussed with him [Fairchild], other than these three wells? I mean, would——
> NIXON. Not to my knowledge. I certainly never discussed anything about his son's case.

House Ex. 1, at 25, Pt. 3, at 25, Judge Nixon explained, "We were talking that time about the time we were making the oil and gas deal, if you'll refer back to the previous page." Nixon, Pt. 2, at 264, 265–66. Judge Nixon similarly explained that in his view his negative answer to the question, "Do you recall any knowledge of the case, meaning the Fairchild case, while you were dealing with Wiley Fairchild?" (House Ex. 1, at 32, Pt. 3, at 32), was accurate, because "I was dealing with Wiley Fairchild from 1980 until the time the deal was consummated in the first part of 1981." Nixon, Pt. 2, at 265. Judge Nixon continued, "I took the word 'dealing' to mean, entering into a deal, to consummate a deal, to consummate a transaction." Nixon, Pt. 2, at 266.[44] Judge Nixon likewise explained that his statement that "nothing was done or nothing was ever mentioned about Wiley Fairchild's son" (House Ex. 1, at 37, Pt. 3, at 37), referred to "prior to the time that the investment was made and consummated in 1981," as evidenced by his statement, "if I even suspected something like that was going on, I certainly wouldn't have invest-

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cial act as a Federal judge. Nixon, Pt. 4B, Vol. I, at 445. Before the committee, Judge Nixon relied principally upon his lack of recall to explain his statements that he did not know Drew existed, except for what he read in the newspaper, that he never heard of or had anything to do with Drew's case, and that Holmes never talked to him about Drew's case. Nixon, Pt. 2, at 266–69.

[44] Asked whether he had "made the conscientious decision in this interview that they [the government] were not interested in what happened after you received the deeds," Judge Nixon responded, "But even if that's not the case, Mr. Cardin, I told you, and I'm telling you again, I [had] no recall of the March 11 conversations." Nixon, Pt. 2, at 266.

ed or have any dealings absolutely." Nixon, Pt. 2, at 267.

In his testimony before the House, Judge Nixon explained similarly that the reason that he said in his interview that he did not know about Drew's existence, except from news articles, was because he was "talking about the first time I knew he existed." Nixon, Pt. 4B, Vol. I, at 510. Judge Nixon explained that he did not know of Drew's existence "up until that time, and I still didn't know whether he worked with his father at any time. I knew he wasn't working for him from what Wiley told me at that March meeting in his office." Nixon, Pt. 4B, Vol. I, at 510.

2. The Interval Between Judge Nixon's April 19, 1984 Interview and His July 18, 1984 Grand Jury Appearance

Following his interview, Judge Nixon telephoned U.S. Attorney George Phillips, Bud Holmes, and Carroll Ingram, as he had told Weingarten that he intended to do, to determine if anyone knew of the reason for the government's investigation. Nixon, Pt. 2, at 240, 285–86. The Judge testified, "They all professed no knowledge, whatsoever, of the investigation or what it was about in any way." Nixon, Pt. 2, at 240. Judge Nixon said that he also asked Ingram why the investment documents had been backdated and Ingram reminded him that the backdating was to conform to the date of the oral agreement. Nixon, Pt. 4A, Vol. II, at 1574; Nixon, Pt. 4B, Vol. I, at 447.

Holmes confirmed that in April 1984 he received a telephone call from Judge Nixon, who "was very, very incensed, mad," and that the Judge told him "that people had been by to question him about his involvement in the handling of the *Drew Fairchild* case, and he had told them that under no circumstances did he have anything to do with it, and that he had told them he had never talked to anyone at any time about the handling of the case, and he repeated that two or three

times." Holmes, Pt. 2, at 105, 132–33. Holmes said that he knew that what Judge Nixon was telling him was not true and that "[t]he impression that I got was that he didn't want the embarrassment of saying that he had had something to do with the handling of a drug smuggler, because he was so very, very violently opposed to any drug-related-type cases." Holmes, Pt. 2, at 105. Holmes said that he did not correct Judge Nixon and remind him of their conversations, because "I thought it was some type of people coming by that were just doing some kind of judicial performance, like, and was just a matter of keeping down adverse publicity. . . . I guess I should have, but I didn't. If that was his position on the case—." Holmes, Pt. 2, at 147.

Ingram also testified that in April 1984 Judge Nixon telephoned him and the Judge "was very concerned. I would say upset, because he had been interviewed that day, I believe by the FBI, relative to the transaction which we have just described, and he wanted to know what was happening, what was going on. . . ." Ingram, Pt. 2, at 167–68. Ingram said that Judge Nixon mentioned the possibility that their conversation was being recorded "from the sense of saying to me that even if this telephone call is recorded, I have a right to talk to you and I want to know what's going on." Ingram, Pt. 2, at 168. Ingram testified that "that's the first knowledge I had about an interview, or an investigation, or anything of that nature." Ingram, Pt. 2, at 168. Ingram stated, "I don't think there was anything out of the ordinary about that [Judge Nixon's call to him]. I received that telephone call—I think it was appropriate in every sense of the word, for him to call, and try to determine what was happening. . . . Judge Nixon did not try, in that telephone conversation, to tell me what I should say or I shouldn't say, or what I should do or shouldn't do." Ingram, Pt. 2, at 172.

Holmes testified that around May 1984 he met with Judge Nixon in the Judge's chambers in Biloxi and the

Judge asked Holmes "if I knew if the telephone conversation we had had with Wiley was taped. And I said, well, I'll find out, or try to find out." Holmes, Pt. 2, at 106, 133–34. Holmes explained, "I think it was just a matter of his [Judge Nixon's] trying to protect his own image, that he didn't want to be saying he had never talked to anybody at any time, and then someone would have a tape of us talking to Wiley." Holmes, Pt. 2, at 106. Holmes testified that he thought that he had immediately asked Carroll Ingram whether Fairchild had taped the call and had reported back to Judge Nixon "that Carroll didn't know anything about any tapes." Holmes, Pt. 2, at 106, 136–37.

Judge Nixon flatly denied that he had ever asked Holmes or anyone else to find out if Fairchild taped his calls. Nixon, Pt. 2, at 240. Ingram placed this meeting with Holmes later, in July 1984, after Ingram testified before the grand jury. Ingram said that Holmes "came to my office and talked to me about the grand jury appearance, and asked me if I had been questioned in my grand jury testimony about a certain telephone call that occurred between Judge Nixon and himself and Mr. Fairchild one night, and I told him, no, I had not been questioned about that event." Ingram, Pt. 2, at 168. Ingram said that Holmes asked him, "did I think that Mr. Fairchild may have taped that telephone call. I told him I had no reason to believe he did or he didn't. My assumption was that he did not." Ingram, Pt. 2, at 168. Ingram testified that Holmes had given him no indication that Holmes was asking on behalf of anyone else whether Fairchild had tape recorded the call. Ingram, Pt. 2, at 170.

3. Judge Nixon's July 18, 1984 Grand Jury Appearance

In July 1984, Judge Nixon volunteered to appear before a special grand jury that had been convened in Hattiesburg to investigate the handling of the Drew Fairchild case and Judge Nixon's investment with Wiley Fairchild. Judge Nixon testified that "[t]here had

been such a flood of publicity in the newspapers" about the government's investigation, including an editorial "stating that I was going to be indicted and going to be convicted and should resign my office," that "I asked . . . if I could appear before that grand jury to tell them what this was all about and clear this matter up and show that I was innocent, and get this over with." Nixon, Pt. 2, at 240. Judge Nixon described the publicity as "devastating to my family and to me." Nixon, Pt. 2, at 241.

Judge Nixon testified before the grand jury under oath on July 18, 1984. House Ex. 41, Stip. 79, 81, Pt. 3, at 432. He gave the committee the following description of his state of mind at the time of his grand jury appearance: "I was outraged. I was upset. I wanted to straighten things out. I wanted to get this over with, and I wanted to go back to my normal life, mine and my family's life at that time. I wanted to set the record straight and answer anything that needed to be answered, and I was determined to try to get that done." Nixon, Pt. 2, at 241.

Judge Nixon told the committee that, although he did not tell the grand jury about his conversations with Fairchild and Holmes, he attempted to answer truthfully the questions that he was asked. Nixon, Pt. 2, at 241. Judge Nixon explained,

> [I]t didn't, simply did not come to m[y] mind; it was a nothing, and I'm sure it was in [m]y recollect. I can't say it was forgotten, but I did not think about it. It was so—it was something that was, I guess the reason I didn't think about it, I don't know to this day, but I just simply did not think about it. . . . I can tell you probably why, but I don't know why. I wish I would have been able to think about it. I wish I had. I wish a question had been asked of me about the blackmail allegation that would have triggered it, but it was not at any time.

Nixon, Pt. 2, at 241, 269–70, 279.

Judge Nixon also testified that he had since reviewed the transcript of his grand jury testimony and thought that his testimony was truthful. Nixon, Pt. 2, at 241, 271. Judge Nixon gave the following response to the chairman's question whether the Judge had testified falsely when he had told the grand jury that he "never had a thing to do with the Drew Fairchild case at all, never talked to anyone about it, State or Federal prosecutor or judge, [that] in any way influence[d] anybody": [45]

> It is not false for this reason, in my opinion. . . . I never did influence anybody. If I did, I didn't know it, Mr. Chairman. I don't know how clear you can come across to someone by Holmes'—taking Holmes' version, for the purpose of answering your question as correct, first of all, we talked about the blackmail, it was a passing on of a blackmail allegation. We did not talk about the case of Drew Fairchild, Mr. Chairman, not the way I perceive discussing a case or talking about it as a lawyer and a Federal judge. The only thing that was mentioned was blackmail.
>
> I did not try to influence Bud Holmes, by his own admission. He stated here, by his version, that he told me he was going to do something about it, and I told him I didn't want him to do a thing, and that he went on and did it on his own. How could I be testifying falsely if I said I did not influence him. . . . And I wasn't involved in the case in any way. I didn't have a thing to do with it in Federal court while it was there. I had nothing to do with it to try to steer it to the State court.

Nixon, Pt. 2, at 271, 312.

Regarding his statement to the grand jury that he had never talked to anyone about Drew's case, Judge Nixon testified,

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[45] The bracketed language reflects changes that were agreed to by the parties in the course of the committee's proceedings and that are reflected in the House's amendment to the impeachment articles following the conclusion of the committee's hearings.

> Mr. Chairman, in my judgment, that is true, because I didn't talk about the case, I talked about the—going back and looking at it now, it was the blackmail matter. But, as I told you, I did not even recall that. I didn't recall the March 11 events. It was nothing then, one little day in my life involving a few minutes that amounted to nothing, resulted in nothing, and apparently cleared up something, and I guess that's why I didn't recall it. But I did not recall it. I honestly did not. I wish I had. I wish they had asked me a question concerning blackmail, if they were looking at it from top to bottom, if they had a blackmail allegation, and quote, according to the FBI report, "involving unidentified parties that Mr. Fairchild complained about."
>
> Well, that could have been anyone. Why didn't they ask me when they came to see me, do you know anything about the blackmail matter, just as they asked Carroll Ingram. That would have triggered it, but they didn't, never anywhere in here. I wish they had. God, I wish they had.

Nixon, Pt. 2, at 271–72. The chairman then stated, "the testimony is very clear from Judge Nixon that he made the statements that he made as charged in the Articles of Impeachment because he didn't recall all of these prior discussions; isn't that correct, Judge Nixon?" Nixon, Pt. 2, at 272 (question). Judge Nixon responded, "Yes, Mr. Chairman." Nixon, Pt. 2, at 272.

Judge Nixon's testimony before the committee that, at the time of his grand jury testimony, he did not remember his conversations with Fairchild and Holmes contrasts with his earlier testimony. Judge Nixon gave the following testimony at his criminal trial:

> Q. While you were in there [the grand jury], did you in fact, were you aware of the fact, that there had been a discussion between you, excuse me, there was a meeting where you were over at Wiley's office and then you had been at Bud's farm that evening and the phone call. Were you aware of that when you were in the grand jury?

A. Yes.

Nixon, Pt. 4A, Vol. II, at 1586–87. A few minutes later in his trial, Judge Nixon testified as follows:

> Q. You told us that you went to that grand jury or when you were at the grand jury you were aware that you had seen Wiley on a night several years before, or I should say an afternoon that you were at the farm and passed on the blackmail complaint of Wiley's to Bud Holmes, right?
> A. Right.
> Q. And that Bud then made a phone call to Wiley which surprised you but it did occur, correct?
> A. Yes.
> Q. And you're in the grand jury. Were you aware at that time did you remember those events?
> A. Yes.

Nixon, Pt. 4A, Vol. II, at 1591–92. A short while later, Judge Nixon was asked whether, when he told the grand jury that he knew of no reason why he would have met with Fairchild after the investment was finalized, he "knew that there had been a meeting between you and Wiley Fairchild where in Fairchild makes this blackmail allegation." Judge Nixon responded, "I knew that, yes. But it was of no moment for the same reasoning I mention[ed] to you earlier. It didn't relate to what you were really asking me about, the oil and gas transaction and its relationship or link if any to the *Drew Fairchild* case. . . ." Nixon, Pt. 4A, Vol. II, at 1734.

When he testified before the House, Judge Nixon's explanation for his testimony before the grand jury focused on the reasons why he believed that his testimony was accurate given the questions that he was asked. For example, the Judge said that his testimony that Holmes had never discussed Drew's case with him was accurate, because "there was no discussion of the case. The discussion—the mention was the blackmail, I passed on the blackmail charge allegation, and that is all. . . . Well, to me, as a judge and as a lawyer, a discussion of the case means something more than merely a mention

of a case." Nixon, Pt. 4B, Vol. I, at 467–68. He also explained, "plus the fact that of course I related it [the question] to any Federal involvement by me as an official, as a Federal official. That is, what involvement I would have had in investigation of this gratuity matter." Nixon, Pt. 4B, Vol. I, at 467.

Judge Nixon was also asked, "When you said that you had given the grand jurors 'all the information that I have, and that I could,' you indeed had not, had you?, because you had not told them about your conversation with Wiley and your conversation with Bud?" He replied, "That didn't relate to the Drew Fairchild conversation itself. It related to blackmail, which turned out to be nothing, which we thought was nothing, which was apparently resolved, and that's the same thing." Nixon, Pt. 4B, Vol. I, at 517. Judge Nixon testified that, even given his conversations with Fairchild and Holmes and everything that had happened since, he still considers each of his statements to the grand jury to be accurate. Nixon, Pt. 4B, Vol. I, at 451–53, 518–19.

When asked to reconcile his testimony before the grand jury that he "had nothing to hide or nothing to withhold" with his failure to tell the grand jury about his conversations with Fairchild and Holmes, Judge Nixon responded, "I wasn't asked about it, and I told you why I didn't volunteer it—because I didn't think it amounted to anything, and I thought it was all resolved. I thought it was nonsense, and it would have been irresponsible, I think, for me to bring that back up." Nixon, Pt. 4B, Vol. I, at 517. Judge Nixon was also asked in the House, "Aside from specifically asking you about a phone call, which at that point they did not know had occurred, what question was it, by the Government, that would have elicited the information you have about your conversation with Wiley, and the subsequent with Bud Holmes?" Judge Nixon responded, "I don't know." Nixon, Pt. 4B, Vol. I, at 515.

The committee questioned Judge Nixon extensively about his recollection of these conversations at the time of his grand jury testimony. The vice chairman had the following extended exchange with Judge Nixon:

> The VICE CHAIRMAN. I had thought that, perhaps, the thrust of your case would be that, yes, you did have conversations with both Wiley Fairchild and with Bud Holmes on the date in question; yes, you did remember those discussions at the time that you were interviewed by Mr. Weingarten and at the time of the grand jury; however, in your own mind, those discussions were so frivolous or minor, *de minimis* that they did not really constitute discussions of the *Drew Fairchild* case.
>
> Now, my understanding of what you have just told us is something different than that, that what you have testified to today is that at the time of the interrogation by Mr. Weingarten and at the time of the grand jury you had no recollection of any discussion, even a *de minimis* one, about Drew Fairchild and his case with either Wiley Fairchild or with Bud Holmes.
>
> Judge NIXON. You're correct, Senator, with the exception of the word recollection, recall at the time. I had no recall of that. I can't say that it was forgotten forever, because obviously it wasn't, because when this matter came up in February 1985, I never denied that any of that happened. I never stated that I ever forgot it completely. I said I had no recall of it at that time, and nothing was asked of me that would trigger a recall. I wish to goodness it had been, and, secondly, where we may have misunderstood each other or you may have misunderstood me, or I may have led you, in retrospect, going back and looking at it, I still do not—I
>
> The VICE CHAIRMAN. I'm focusing only on—
>
> Judge NIXON. At the time—
>
> The VICE CHAIRMAN.—The date in question.
>
> Judge NIXON. That's correct, Senator.
>
> The VICE CHAIRMAN. And I'm focusing only on your state of mind at the time you were questioned by Mr. Weingarten, and, then, at the time

> of your appearance before the grand jury; and you're saying that at that time, you had no recall, is your word, of any discussion, even the *de minimis* discussion, with either Wiley Fairchild or with Bud Holmes about the *Drew Fairchild* case?
>
> Judge NIXON. Absolutely, Senator, and that's what I tell you now.
>
> The VICE CHAIRMAN. So your interview—what you said in the interview and what you said in the grand jury wasn't—there was no word game on your part, there was no equivocation, you had no reservation in your own mind of a distinction between a discussion and a passing reference, you didn't even remember the passing reference, correct?
>
> Judge NIXON. Correct, Senator. That is absolutely correct.

Nixon, Pt. 2, at 273–74.

Judge Nixon testified that in the three months between his April 19, 1984 interview and his grand jury appearance on July 18, 1984, the investigation and his role in it had received widespread attention in the press, he had retained legal counsel, he had been given a copy of the transcript of the interview, and he had searched his files for documents relating to his investment with Fairchild. Nixon, Pt. 2, at 274–75, 298–300; House Ex. 41, Stip. 80, Pt. 3, at 432. The following exchange occurred between the vice chairman and Judge Nixon:

> The VICE CHAIRMAN. For a three month period of time on a matter that was clearly of personal importance to you and about which you made several phone calls, searched your files for evidence, you had a transcript of the interview with Mr. Weingarten that you could peruse, clearly, you had plenty of time and personal motivation to reflect on exactly the questions that Mr. Weingarten asked you.
>
> Now, Mr. Weingarten asked you questions relating to discussions. He asked you questions about whether or not you had discussed this matter with Wiley Fairchild, whether or not you had discussed

this matter with Bud Holmes. He asked you those questions. Those were just read by Mr. Cardin. And you're telling us that during that three month period of time and at the time that you appeared before the grand jury, you had no recollection of your discussion with Wiley Fairchild, and no recollection of your discussion with Bud Holmes about the *Drew Fairchild* case?

Judge NIXON. Exactly what I'm telling you, Senator, and that's the truth, so help me God. I wish I had. I wish I had, because there was nothing at all to hide there. There was nothing illegal done by me. There was nothing that resulted from that. Why—I wish I had. Senator, I might add this, if I thought that I had done anything illegal or knew that I had done something illegal, I might have——

The VICE CHAIRMAN. Judge, I'm not asking you that. I mean, the point is that when you testified before the grand jury—let's leave out the question of the [interview] interrogation—when you testified before the grand jury, you are now saying that you said that you had no prior dealings, prior discussions with Wiley Fairchild and Bud Holmes because you don't recall, you didn't at the time recall having those discussions.

Judge NIXON. I didn't recall that.

The VICE CHAIRMAN. And, yet, in fact, you had those discussions?

Judge NIXON. Yes.

The VICE CHAIRMAN. But you didn't recall them.

Judge NIXON. Yes, sir.

Nixon, Pt. 2, at 276, 298–300. Senator Chafee also asked Judge Nixon how he could have failed to recall his conversations with Fairchild and Holmes, once the matter had become of such great import to the Judge, as it had by the time of his grand jury appearance:

Senator CHAFEE. Now, your point is that you just, plain did not remember those conversations [with Fairchild and Holmes].

Judge NIXON. Senator, I didn't remember that. But taking it right now in context and looking at

> it, he [Fairchild] did not, and stated himself that he did not, ask me to do anything about his son's case.
>
> Senator CHAFEE. Well, now you are arguing the meaning of it rather than the memory of it.
>
> Judge NIXON. Well, I have to answer that way in view of your question, Senator. I think, with all due respect, I don't know how to answer it otherwise.

Nixon, Pt. 2, at 279–80. Judge Nixon gave an extended response to Senator Kohl's question how it was that "you would not recollect that one event that you say you don't remember:"

> Senator Kohl, there is nothing I can do about that except to tell you that I am telling you the truth. I would have been foolish not to have answered questions truthfully if I could have remembered those things that I say I did not have recall on. I would have been very foolish and dumb, and I would have had no motivation for doing that, Senator. What motivation would I have had? I had none; I just didn't. And I don't know why. Now that it is all blown up and magnified, certainly you look back and say, well, you should have; but it was a nothing at that time, Senator. It amounted to nothing. Apparently—I guess that's why I didn't recall it. It was a misunderstanding, apparently, cleared up. I never heard another word about anything in connection with that after that until Reid Weingarten came to see me in 1984, Reid Weingarten and Ken White-Spunner.
>
> And you would have to put yourself in my place to know what a tremendous case load we had and what a tremendously busy job I had and how busy we were all the time. I told you about our business load. And I had a lot of other problems, personal problems, that I related in part here to the committee, and I did not have time to—I just didn't, I guess—I don't know how to tell you I didn't recall it but I can simply tell you that I didn't, because it was a nothing, Senator. God, I wish I could remember. I wish the question had been asked of me. Why they didn't ask me some-

> thing about a blackmail allegation that would have triggered it; I don't know if they were looking at it from that respect.

Nixon, Pt. 2, at 277–78.

In support of his position that he had no motivation to conceal his conversations with Fairchild and Holmes, Judge Nixon offered an opinion letter from a leading national expert on legal and judicial ethics, Yale Law School Professor Geoffrey C. Hazard, Jr., who stated his view that, based on the facts as they had been provided to him, Judge Nixon had not violated the Code of Judicial Conduct through his conversations with Fairchild and Holmes. Nixon Ex. 68–68A, Pt. 3, at 1504–20; Pt. 2, at 337 (statement of Judge Nixon's counsel). Senator Reid summarized Judge Nixon's explanation that he had no motive to lie to the government, "You are being charged, you have been convicted, and you have served time in prison for lying about something that had no bearing on anything." Judge Nixon responded, "Yes, sir, that's exactly right." Nixon, Pt. 2, at 291, 288.

4. Following Judge Nixon's July 18, 1984 Grand Jury Appearance

Upon the conclusion of Judge Nixon's appearance before the grand jury, his counsel distributed a press release because the Judge did "not believe I should be expected to sit back and not respond to totally unfounded and false suspicions which have been widely published and distributed." The press release stated, among other things, "I do not know Mr. Drew Fairchild; I have in no way participated in Federal proceedings against other alleged participants with Mr. Drew Fairchild; I have never discussed the Drew Fairchild matter with Wiley Fairchild or any persons associated with the Fairchild companies; I never attempted to influence the handling of any aspect of the case; I have had absolutely nothing to do with any phase of the Drew Fairchild affair." House Comm. Ex. 24, Pt. 4B, Vol. II, at 367–68.

Fairchild, Holmes, and Ingram all testified before the grand jury in July 1984. None informed the grand jury of his conversation with Judge Nixon about the handling of Drew's case. In Holmes' words, "They didn't ask me about the phone call, so I didn't volunteer it." Holmes, Pt. 2, at 106. Holmes explained, "Well, quite frankly, I just didn't want to counter or contradict what Judge Nixon had already said in his public statement, and I guess he was just trying to protect his public image." Holmes, Pt. 2, at 106, 108, 135. Fairchild explained, "And the reason I didn't I had forgotten all about the phone call." Fairchild, Pt. 2, at 69–70.

In his appearance, Ingram did not advise the grand jury that he had been told by Judge Nixon that the Judge had conversations with Fairchild and Holmes about the handling of Drew's case. Ingram stated that "in my mind it [the conversation with Judge Nixon] was not a discussion, because I didn't ask him anything about that information he relayed to me, we did not have a discussion about it; it was an implied—." Ingram, Pt. 2, at 183. Ingram explained,

> [W]hen I finished that telephone conversation I was not absolutely sure what the message was. It was understated, it was implied. . . . [It] was stated in such a manner that there was a message there for you to receive but it was not just outwardly expressed. . . . I'm saying to you that there was not any detailed discussion between Judge Nixon and I about his talk with Bud Holmes. . . . It was that he made that information known to me in a passing way as we were talking about other things. And when I finished the telephone conversation, I didn't have a bunch of facts to put together. . . . So quite frankly, in the grand jury room, when I was asked that question, I honestly said that I had not had any discussion with Judge Nixon, because I hadn't. And what's more than that, probably that particular phone call at that time probably did

> not even go through my mind that I had had with him.

Ingram, Pt. 2, at 192–93. Holmes appeared again before the grand jury on September 5, 1984, and again did not disclose his conversations with Judge Nixon or Fairchild. Nixon Ex. 33, Pt. 3, at 919.

Fairchild was indicted on September 6, 1984, on one count of giving an unlawful gratuity to Judge Nixon, for Fairchild's conveyance of mineral interests, and one count of perjury, for his testimony before the grand jury concerning the preparation of the documents for the conveyance. House Ex. 11, Pt. 3, at 233; House Ex. 41, Stip. 82, Pt. 3, at 432. Fairchild told the committee that he did not think that he had committed a crime and was shocked and scared by his indictment. Fairchild, Pt. 2, at 70–71. He testified that his decision to sell mineral interests to Judge Nixon had nothing to do with Drew's case. Fairchild, Pt. 2, at 68.[46] Fairchild said, however, that his attorneys advised him that he was "guilty as hell" of giving Judge Nixon an illegal gratuity. Fairchild, Pt. 2, at 71, 81–82.

Based on the advice of his attorneys, Fairchild entered into plea negotiations with the government, and on November 1, 1984, he made a proffer of evidence that he had not given the government in his grand jury appearance. In his proffer, which was tape recorded, Fairchild told the government for the first time about his conversations with Judge Nixon and Holmes concerning the handling of Drew's case. Nixon Ex. 35, at 5–9, Pt. 3, at 959–63; Nixon Ex. 36, Pt. 3, at 964. According to Fairchild's testimony, he had been told by the Federal prosecutors that to negotiate a good deal he would need to provide "a smoking gun," or, in other words, damaging information about Judge Nixon. Fairchild, Pt.

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[46] Ingram testified similarly that the investment "had absolutely nothing whatsoever to do with the Drew Fairchild case. It was totally unconnected." Ingram, Pt. 2, at 177, 172–73.

4C, at 190-91, 193; Baltar, Pt. 4C, at 30. Fairchild said that he "lay awake at night thinking what could have transpired, and I thought of that telephone call." Fairchild, Pt. 2, at 71; Fairchild, Pt. 4B, Vol. I, at 214. Based on Fairchild's proffer, the government offered to dismiss his perjury charge in return for his guilty plea on the unlawful gratuity count and his agreement to cooperate. House Ex. 12, Pt. 3, at 237. On November 26, 1984, Fairchild entered into a written plea agreement and entered a guilty plea on those terms. House Ex. 13, Pt. 3, at 239.

Fairchild appeared again before the grand jury on November 28, 1984, and testified about his meeting with Judge Nixon and subsequent telephone conversation with the Judge and Holmes. Nixon Ex. 41A, Pt. 3, at 988. According to Judge Nixon, Fairchild's incriminating testimony about Judge Nixon, at both the grand jury and Judge Nixon's trial, was tainted by improper coaching and overreaching by the government prosecutors, including the use of a chronology prepared for Fairchild by an assistant, John Baltar, and of a "script" prepared by Weingarten, to ensure that Fairchild's testimony conformed to the government's view of the case against Judge Nixon. Nixon, Pt. 2, at 308; Nixon Ex. 37-39, Pt. 3, at 969-75; Nixon Ex. 59, Pt. 3, at 1237; Nixon Ex. 76, at 3, Pt. 3, at 1561; Baltar, Pt. 4C, at 50-55; Weingarten, Pt. 4C, at 433-36.[47]

In January 1985, following the government's service of subpoenas on his office staff, Ingram flew to Washington to discuss with the prosecutors his role in the government investigation. Ingram, Pt. 2, at 168-69. While Ingram was in Washington, he learned through a

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[47] Judge Nixon has also maintained that Fairchild's testimony was tainted by inducements and promises by the government that were not disclosed to the defense at trial. These claims were reviewed and rejected in Judge Nixon's post-conviction proceedings for a new trial. House Ex. 37, Pt. 3, at 364; House Ex. 39, Pt. 3, at 403.

telephone conversation between his attorney and Fairchild's counsel of the government's interest in the telephone conversation in which Judge Nixon had informed Ingram of the Judge's conversations with Holmes and Fairchild concerning Drew's case. Ingram testified that he told the government about his conversation with Judge Nixon "immediately, when it became apparent to me that that was an important issue." Ingram, Pt. 2, at 175–76.

In February 1985, Holmes visited Ingram to discuss the telephone call with Judge Nixon. Ingram testified that he told Holmes "that I have had a conversation with the Justice Department about that phone call," and that Holmes' "response to me was that that's a problem. . . . Created a problem for him, because I'm assuming he had testified contrary to that." Ingram, Pt. 2, at 170. Ingram further testified that Holmes visited him again a few days later and conveyed that he "would prefer and would desire that my testimony have been different, and that I would remember it a different way." Ingram, Pt. 2, at 171.

Holmes testified that Ingram "told me that he had been to Washington, and that he had told them about the telephone call, and that there was no criminal act in a Federal judge talking to a State prosecutor, and that there would be no problem at all if everybody would just come on in and just tell them about the telephone call." Holmes, Pt. 2, at 107. Holmes testified that he responded to Ingram, "You've made me out to be a perjurer." Holmes, Pt. 2, at 136. Holmes said, "I remember I was talking to him [Ingram] very strong about it, trying to check out exactly what his remembrance was, and it was pretty accurate." Holmes, Pt. 2, at 137.

According to Holmes, "So I did go—I called Judge Nixon, told him I wanted to see him. He had a jury out, and we came down and met in his car. And I told him basically about my conversation with Carroll [Ingram], and he was upset and wanted to know why I had talked

to Carroll about it." Holmes, Pt. 2, at 107.[48] Holmes testified that he then said to Judge Nixon, "Well, Judge, you're the one that asked me to go to him and find out if they were taped." Holmes, Pt. 2, at 138. Holmes testified that the next day he learned through Judge Nixon's lawyer that Judge Nixon acknowledged the telephone call to Fairchild, but that Judge Nixon said that Holmes had placed the call without the Judge's knowledge. Holmes, Pt. 2, at 138–39; Holmes, Pt. 4B, Vol. I, at 268.

Judge Nixon testified that Holmes telephoned him sounding upset and asked to meet. Judge Nixon said they met in his car, because Holmes did not want to meet in the Judge's chambers because of both the atmosphere in the courthouse at that time and Holmes' personal hostility to an attorney in a case that the Judge was in the midst of trying. Nixon, Pt. 2, at 241–42. Judge Nixon gave the following account of the conversation with Holmes in the Judge's car:

> Judge NIXON. He [Holmes] said that he was in trouble, he had testified before the grand jury that he had not ever talked to Wiley Fairchild about his son's case, and that he had mentioned something about it to Carroll Ingram, and Carroll Ingram had mentioned it to the Federal authorities, and he thought he was going to be—might be indicted for perjury.
>
> Mr. STEWART. What was your response? I'm sorry, go ahead.
>
> Judge NIXON. And he said, Judge, there wasn't any such call, was there?
>
> Mr. STEWART. And what was your response?
>
> Judge NIXON. I said, Bud, you know there was a call. You know you called Wiley Fairchild. There was nothing in the world wrong with that as far as I know. I said, I don't know what you told him in the conversation, because I didn't hear it, but

[48] On cross examination, however, Holmes testified, "I didn't get the impression he [Judge Nixon] was particularly worried at all about it [the telephone call]." Holmes, Pt. 2, at 138.

> there was certainly nothing wrong with it, and if I'm asked about it, I'm certainly going to tell about it.
>
> Mr. STEWART. What was Mr. Holmes' response?
>
> Judge NIXON. Well, he shook his head and he mumbled, he was quite upset, and he was quite, I think, mad at me, because apparently I didn't go along with what he was suggesting.

Nixon, Pt. 2, at 242. Judge Nixon testified that he never told Holmes on "any occasion" that there was no telephone call. Nixon, Pt. 2, at 242.

Judge Nixon testified that it was not until this meeting in February 1985 with Holmes in his car that the Judge remembered his conversations with Fairchild and Holmes. Nixon, Pt. 2, at 252, 269. Judge Nixon explained, "That's the first time it [my memory] was jogged, because that's the first time that anyone had asked anything or brought up anything about a phone call." Nixon, Pt. 2, at 280. In response to Senator Chafee's question whether, at the point that he remembered the conversations, Judge Nixon did not become concerned about his earlier testimony to the grand jury denying any knowledge or discussions, Judge Nixon responded, "Well, Senator, if anyone had wanted to ask me any questions about it, I could have easily been asked to come back before the grand jury or subpoenaed, and I wasn't." Nixon, Pt. 2, at 280. Judge Nixon said that he was "certainly willing to be called back" to testify, but that, after discussing the situation with his attorney, he decided not to volunteer to return before the grand jury because "I truly was the target at that time." Nixon, Pt. 2, at 281. Asked again by Senator Murkowski why he had not sought to return to correct his testimony before the grand jury, Judge Nixon said,

> [I]f you were down in Mississippi and going through and saw what we saw was happening at that time and the atmosphere that surrounded that courthouse at the grand jury session—it looked like Gestapo headquarters or KGB

> headquarters. It was the worst feeling in the world to see the courthouse turned into what almost looked like an armed camp, and it was a terrible ordeal that we were going through, and it has been for five and one-half years.
>
> With all due respect, it is easier—I don't say it is easier—but your perspective of it from here is certainly not the perspective you would have gotten if you had been there.

Nixon, Pt. 2, at 289, 304.

Holmes testified before the grand jury for the third time on February 21, 1985. When asked before the committee whether he had testified truthfully in this appearance, Holmes responded,"Not totally. I tried to soft-pedal it. I told them about the telephone call, and I told them that I was drinking and that was the reason I didn't tell them about it the first time—but that wasn't the total truth." Holmes, Pt. 2, at 107. Holmes explained, "I was trying to soft-pedal it because Judge Nixon was taking, as I gathered it, an approach that it was just a real light thing, and I was having to explain why I didn't explain it to him the first time I was in the grand jury, so I tried to soft-pedal it to the grand jury." Holmes, Pt. 2, at 140.

On March 23, 1985, Holmes was indicted for perjury and obstruction of justice for his testimony at all three of his grand jury appearances, including his concealment of evidence about the phone call to Fairchild from Holmes' farm. House Ex. 41, Stip. 84, Pt. 3, at 432; House Ex. 23, Pt. 3, at 274. Holmes testified that after a time he ran into Judge Nixon at a social event and told the Judge that they needed to get together to discuss the telephone call. According to Holmes, Judge Nixon replied, "I don't know why you called Wiley." Holmes, Pt. 2, at 140–41; Holmes, Pt. 4B, Vol. I, at 272–73. Judge Nixon placed that encounter in April 1985, and said that "Bud Holmes came in and walked over to me, . . . and he said, 'Judge, you know that phone call that you

said I made,' he said, 'I don't remember making it. I was drunk and you were sober.' " Nixon, Pt. 2, at 243.

On June 18, 1985, as his trial was beginning, Holmes pleaded guilty to one count of criminal contempt in connection with his February 1985 grand jury appearance, including his failure to disclose the substance of the telephone call to Fairchild, and agreed to cooperate with the government in return for the dismissal of the indictment against him. House Ex. 41, Stip. 85, Pt. 3, at 432; House Ex. 24, Pt. 3, at 290. Following his guilty plea, on June 28, 1985, Holmes returned once again to the grand jury, apologized for his earlier testimony, and testified about his meeting with Judge Nixon and the telephone call to Fairchild. Holmes, Pt. 2, at 108; Nixon Ex. 55, Pt. 3, at 1151–1213.

On September 18, 1985, Fairchild, whose sentence on his illegal gratuity guilty plea had been deferred pending his cooperation with the government's investigation, was sentenced to two years in prison, with all but 60 days (which was served in a halfway house) suspended, three years probation, and a $10,000 fine. House Ex. 41, Stip. 83, Pt. 3, at 432; House Ex. 13, Pt. 3, at 239. On December 11, 1985, Holmes was sentenced to one year in prison and a $10,000 fine for his guilty plea to contempt. House Ex. 25, Pt. 3, at 292; Nixon Ex. 61, Pt. 3, at 1242. However, because the criminal contempt statute permits the imposition of only a fine or imprisonment, but not both punishments, and Holmes paid his fine, he ultimately served no time in prison. Holmes, Pt. 2, at 107–08; *United States* v. *Holmes*, 822 F.2d 481 (5th Cir. 1987).

Judge Nixon was indicted on August 29, 1985, for receiving an illegal gratuity from Fairchild and for three counts of perjury before the grand jury. House Ex. 41, Stip. 4, Pt. 3, at 424; House Ex. 28, Pt. 3, at 308. On February 9, 1986, following a two-week trial at which Fairchild, Holmes, Ingram, and Judge Nixon testified, Judge Nixon was convicted on two counts of perjury

and acquitted on receipt of an illegal gratuity and the third perjury count. House Ex. 41, Stip. 5, Pt. 3, at 424; House Ex. 29, Pt. 3, at 317. On March 31, 1986, Judge Nixon was sentenced to five years imprisonment on each of the two counts on which he was convicted, to run concurrently. House Ex. 41, Stip. 7, Pt. 3, at 425; House Ex. 30, Pt. 3, at 319. Following the exhaustion of his appeals (House Ex. 41, Stip. 10–11, Pt. 3, at 425; House Ex. 32–34, Pt. 3, at 337–56), the Judge began serving his prison sentence on March 23, 1988. House Ex. 41, Stip. 14, Pt. 3, at 425.

* * * * *

COMMITTEE ROLLCALL VOTE

In compliance with paragraph 7 (b) and (c) of Rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote of the Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr., to issue this report to the Senate was as follows:

YEAS	NAYS
Mr. FOWLER	
Mr. DANFORTH	
Mr. HEFLIN	
Mr. WIRTH	
Mr. REID	
Mr. ROBB	
Mr. KOHL (by proxy)	
Mr. CHAFEE (by proxy)	
Mr. MURKOWSKI	
Mr. JEFFORDS	
Mr. MACK	
Mr. SYMMS (by proxy)	

ADDENDUM A

ARTICLES OF IMPEACHMENT AS AMENDED

H. RES. 87, RECEIVED ON MAY 11, 1989.

[As amended by H. Res. 251, 101st Cong., 1st Sess.]

RESOLUTION Impeaching Walter L. Nixon, Jr., Judge of the United States District Court for the Southern District of Mississippi, of High Crimes and Misdemeanors

Resolved, That Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, be impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi (Hattiesburg Division) to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the criminal prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would

tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

ARTICLE II

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Judge Nixon had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

ARTICLE III

By virtue of his office as a judge of the United States District Court for the Southern District of Mississippi,

Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to obey the laws of the United States.

Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts by the following:

After entering into an oil and gas investment with Wiley Fairchild, Judge Nixon conversed with Wiley Fairchild, Carroll Ingram, and Forrest County District Attorney Paul Holmes concerning the State criminal drug conspiracy prosecution of Drew Fairchild, the son of Wiley Fairchild, and thereafter concealed those conversations as follows:

(1) Judge Nixon concealed those conversations through one or more material false or misleading statements knowingly made to an attorney from the United States Department of Justice and a special agent of the Federal Bureau of Investigation during an interview of Judge Nixon conducted in Biloxi, Mississippi, on April 19, 1984. The substance of the false or misleading statements included the following:

(A) Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case.

(B) Wiley Fairchild never brought up his son's case.

(C) At the time of the interview Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the interview.

(D) Nothing was done or nothing was ever mentioned about Wiley Fairchild's son.

(E) Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case.

(F) Judge Nixon had done nothing to influence the Drew Fairchild case.

(G) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case.

(2) Judge Nixon further concealed his conversations with Wiley Fairchild, Paul Holmes, and Carroll Ingram concerning the Drew Fairchild case by knowingly giving one or more material false or misleading statements to a Federal grand jury during testimony under oath in Hattiesburg, Mississippi, on July 18, 1984. The substance of the false or misleading statements included the following:

(A) Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

(B) To the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February 1981.

(C) Judge Nixon gave the grand jury all the information that he had and that he could, and had withheld nothing during his grand jury testimony.

(D) Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court.

(E) Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild case.

(F) Judge Nixon never had a thing to do with the Drew Fairchild case at all.

(G) Judge Nixon "never talked to anyone, State or Federal, prosecutor or judge, that in any way influenced anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

ADDENDUM B

S. RES. 128, AGREED TO MAY 11, 1989.

[As amended by S. Res. 167, 101st Cong., 1st Sess.]

Resolved, That pursuant to rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve Senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The majority and minority leader shall each recommend six members to the Presiding Officer for appointment to the committee. The committee shall designate one of its members to be chairman and one of its members to be vice chairman.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under rule XI.

SEC. 4. During proceedings conducted under rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the presiding officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6. (a) The actual and necessary expenses of the committee, including the employment of staff at an annual rate of pay, and the employment of consultants with prior approval of the Committee on Rules and Administration at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee, except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay. (b) In carrying out its powers, duties, and functions under this resolution, the committee is authorized to, in its discretion and with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

SEC. 7. The Secretary shall notify the House of Representatives and counsel for Judge Walter L. Nixon, Jr., of this resolution.

ADDENDUM C

RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

XI. That in the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

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